

GHANA TODAY:  
AN ASSESSMENT OF THE CHANGES IN THE JUSTICE  
SYSTEM DURING THE COLONIAL ERA

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## ABSTRACT

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Gold Coast (present-day Ghana) was divided inland into ethnic groups. These ethnic groups were governed by laws and a corollary penal system, derived from custom. The justice system during the pre-colonial era was focused on maintaining social equilibrium and stability. Thus, imprisonment as a form of punishment was not aboriginal. Accordingly, punishments ranged in degree from apologizing, to paying compensation to victims, to performing the requisite animal sacrifice. However, as the Gold Coast came under the aegis of British rule, the justice system was changed.

Emile Durkheim's theory on social change would explain the change in the Ghanaian justice system as an inevitable linear progression/change. Max Weber's would explain the change in the justice system as an effect of rationality to make the justice system become more methodological, efficient and predictable. Michel Foucault's would explain the change as an attempt by the British to control indigenes. But, how would a sample of subjects familiar with the justice system in Ghana explain this change? Would their explanation align with any of the above-mentioned theorists? This research is focused on examining what legal practitioners and persons, who have knowledge about the Ghanaian justice system, think caused changes in the justice system during the colonial era. This research identifies their views on the theoretical underpinning for the changes that occurred.

To this end, a convenience and snow ball sampling technique were used to sample respondents. A Skype interview and an electronic survey were used to collect the data. To get an insight of what may be influencing the answers given to the above questions, demographic variables were analyzed in relation to the responses. These variables were gender, region where the respondent was raised, and profession.

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## **Chapter One**

### **Introduction**

Identical in all human societies is the crucial need to ensure law and order, since some human beings are arguably self-interested and shrewd. Meaning, they may be likely to make decisions that would only inure to their benefit even if it means causing harm to others. To manage these tendencies, as well as repress the accomplishment of these selfish desires, there may be a need to formulate laws and a commensurate penal system, which, hopefully, achieves social consensus en route (Agnew, 2011). This fundamental principle, which lends itself to both primitive and developed societies, is very much evident amongst embryonic tribes in the Gold Coast (present-day Ghana).

Needing to maintain law and order, the Gold Coast before 1844 (British Rule) was regulated by traditional laws with a corresponding punishment system, focusing on ensuring social harmony and stability. But, this was short lived as the colonial machinery in their quest to gain utmost control made drastic, if not brutal, changes to the traditional legal arrangement and penal systems (Miller, Vandome & McBrewster, 2009). It is against this backdrop that my research is focused upon examining what legal practitioners and persons who have knowledge about the Ghanaian justice system think caused the changes during the colonial era. The objectives of this research are to: (1) identify the causes for the change as well as

the theoretical underpinning to the change; (2) ascertain how different the current justice is from what existed in the colonial era; (3) identify whether or not the colonial justice system Ghana inherited will change or remain in place; (4) examine whether Ghana's justice system would have been different without colonization; and (5) identify respondent recommendations for the current penal system.

This chapter will focus on providing the historical perspective for the changes that occurred. The Social Structure of the Gold Coast, the Family and Marriage Arrangement, the Economic Structure, the Religious Foundations, and The Legal and Penal Institutions will be discussed.

### **Nature and Structure of the Gold Coast**

The Gold Coast society, in the pre-colonial era, covered an area of about 24,000 square miles. It had a population of about one and three-quarter million people, all but a few thousand of whom were African, and these Africans inhabited about one-quarter of the area. Internally, as pointed out by Thomas (1944), the Gold Coast Colony was made up of several autonomous ethnic or tribal states, with uniquely different constitutional regimes and coalitions. Being ethnically diverse, embryonic populations in the Gold Coast lived by sets of rules particular and peculiar to their society or community. Examples of these ethnic groups include, but are not limited to, Ashantis, Fantis and the Northern Territory people.

These ethnic groups were sub-divided into constituents. The headman, who was the leader of the smallest constituent was responsible to the village chief. The village

chief was also subject to the senior or divisional chief and the divisional chief to the paramount chief (Dzivenu, 2008). Imbedded in the status of a chief is the oversight duty of presiding over all issues ranging from political, social, economic, and judicial. The paramount chief, who happens to be the head of the stool (seat of government) is selected by tribal councilors from within a recognized family group. Thus, the maintenance of the status and privileges of the stool is of great interest to a considerable stratum of society and, particularly, the families in the society (Dzivenu, 2008). As the family has played a central role in the lives of all people in Ghana, that institution is discussed in the next section.

### **The Family and Marriage Institution**

The family and marriage institutions played an important role in the lives of the people. Bedsoe discovered that, in the traditional Gold Coast setting, marriage was contracted in order to preserve the continuousness of the lineage via child bearing. This need for continuity, among other things, contributed to the high levels of the polygamous form of marriage. Polygamy was supported because it was considered a formidable means of ensuring continuity since it made provision for childless marriages. As divorce was almost unheard of, barren women were always comforted by getting a co-wife with the hope that she will bear children. This marriage arrangement was also a sign of prestige and prosperity. The prestige and prosperity come through having many children, which serves as the father's "life insurance", as well as a guarantee for a good home in old age (Weeks, 2005).

Most African societies, Gold Coast included, stress the importance of large families and, therefore, a mother of several children is respected by both relatives and friends. For example, the celebration called "bedu dwan" among the Ashantis, is organized for a woman who gives birth to ten children. This indicated that the Gold Coast encouraged childbearing and rewarded parenthood (Weeks, 2005). Even though it was honoring to have many children, it was more honoring if these children were males. Males were valued more highly than females owing to the belief that the desired security and social goals can only be achieved by the birth and survival of a son (Weeks, 2005). In other words, male children are considered a better beneficiary. Also, as many in the society viewed male children as an asset, many men continued marrying as many wives as they desired until they would have at least one son. These family units formed the basis for the primary economic activities in the Gold Coast. Next, the economic arrangement of the society is discussed.

### **The Economic Institution**

In terms of their economic arrangements, the Gold Coast was based largely upon farming. Being the primary occupation of the people, farm work was normally done by members of the family, as they were a cheap source of labor. In some of these societies, farming was done communally. This meant two or more households would prepare the land for cultivation, planting and harvesting. The host farmer, in this cooperative system, provided food and drink during the working periods on his farm. No one received any form of payment other than the food and drink. Honesty, hard work

and punctuality of the family members were essential for the success of this system. This system of communal farming was known as 'nnoboa' and 'fidodo' in Akan and Ewe language respectively (Miller, Vandome & McBrewster, 2009).

Other economic pursuits in the pre-colonial period included hunting and gathering, fishing and livestock rearing. All these occupations constituted a subsistence economy and food crops were produced for the consumption of the family and not necessarily for the market. Besides agriculture and fishing, people also engaged in the manufacturing of handicrafts such as textiles, metal goods, pottery, leather goods and canoes (Miller, Vandome & McBrewster, 2009).

Needing to acquire goods and commodities, which some ethnic groups lacked the capacity to produce, contact was established between different ethnic groups such as the coastal dwellers and the interior inhabitants. These relationships led to an exchange economy. This meant that people would exchange what they produced for other items they did not have. For instance, the coastal dwellers exchanged dried fish and salt for foodstuffs and grains from the interior inhabitants. Goods were exchanged either by barter or by gold dust (Miller, Vandome & McBrewster, 2009). In addition to these economic activities, religion also played a dominant role in the precolonial Ghana. The religion of the people is examined in the next section.

## **The Religious Institution**

The religious institution played a crucial role in the pre-colonial era. Gold Coasters were polytheistic, they worshipped and believed in multiple deities. Their major religion was known as the African Traditional Religion. African Traditional Religion was not dogmatic as it tolerated and accommodated alternative religious cultures. This accommodation and tolerance existed because African Traditional Religion was not export oriented, non-hegemonic and non-proselytizing. Thus, they did not have the ambition to save the world. It was a domestic religion for Africans and Africans only. Therefore, it was not in competition with Christianity or Islam in the marketplace of creeds and souls and avoided conflicts and tensions with the other religious groups (Pobee & Mends,1977).

As there was no formal education structure at the time, African Traditional Religion performed the educational role in the society. All religious activities were conducted in the ethnic or regional language, thereby strengthening the various languages. Thus, the components of the religion were handed down to generations through oral traditions, which played a key role in educating the people about their world and the customs that were to be adhered to. Additionally, the religion had no sacred texts or creed comparable to the Torah, Bible or the Koran. Religious expressions were found in oral traditions, rituals, myths, festivals, symbols and shrines. The primary role of African Traditional Religion was to provide for the human well-being in the present, as opposed to offering salvation in a future world (Pobee & Mends,1977).



Though beliefs and practices differ and vary across ethnic groups and regions, they had unifying themes. First, they all believed in the existence of a supreme God who created and ordered the world, but is often experienced as distant and unreachable. Second, they believed in the existence of lesser divinities who are more accessible and act as intermediaries between man and the supreme being. Finally, they all believed in ancestors who acted as emissaries between living beings and the divine, helped to maintain social order and withdrew their support if the living behaved wrongly. If there are infractions, the oraculists (leaders of the African Traditional Religion) are called upon to discern what is wrong and make recommendations on how to resolve it (Pobee & Mends, 1977).

Even though the religious institution ensured, to some extent, orderliness, Gold Coast societies did have a formidable legal and penal arrangement to ensure law and order.

### **Legal Arrangement**

Despite the unique differences among ethnic groups, they displayed some level of similarity in terms of how the laws were derived from the customs of the people. Customs refer to a habitual practise or manner (Webster's, 1986). These are not written and they have been in practice for a long time. Consequently, traditional laws were customary law. Therefore, understanding traditional laws means understanding, in toto, the characteristics of customary laws.

### **Characteristics of Customary Law**

Major feature of the customary law was that it was very popular, amendable and helped maintain social equilibrium. Customary laws were very widespread and were vital to society's survival because the more popular the customary laws were the more possible it was to hand them down to future generations.

In their recent work on the Ghanaian justice system Davies and Dagbanja, (2009) contend that customary law enabled adaptability since it was not coded or written down. Hence, laws were amendable or adjustable whenever it was necessary and convenient for the society to change them. Customary laws had the capacity to change in order to avoid the fossilization that characterizes some civil codes (Davies & Dagbanja, 2009). Davies and Dagbanja, (2009) further argue that the fundamental focus of the customary law was to maintain the social equilibrium among groups related by kinship. That is why, despite the political, social, economic and external influences or pressures, the essential features of the customary law remained intact.

This desire to protect the harmony and consensus of society not only influenced the nature of laws used but, arguably, had an effect also on how: (1) punishment was meted out; and (2) proceedings were structured in the traditional court.

### **The Traditional Court and Penal Arrangements**

Since customary laws were designed to ensure stability and harmony, the traditional court was very much structured to reflect this agenda. Thus, the traditional

court was premised on three principles: (1) the Restorative Principle- The chief's courts were based on the restorative principle which allows both victims and the offenders to actively participate in the defining of the dispute, the resolution of the conflict and restoring to the victim whatever they had lost ; (2) the Accountability Principle- The traditional court has been premised on the vindication of victim and holding the offender accountable to both the victim and the community; and (3) the Reconciliation Principle- The traditional court is entrusted with the role of reconciling litigating parties (Dzivenu, 2008).

Like any other court, the traditional court was based upon interpreting evidence and imposing judgments. In this process, the chief alone or with his council (made of community elders/advisors who assist the chief in his day to day administration), was recognized as the mediator who would lead and arbitrate discussions of the problem (Davies & Dagbanja, 2009). Contending parties typically do not address each other and interruptions are not allowed while either party stating their case.

The deposition of statements is followed by an open deliberation process, which is comprised of listening to and cross-examining witnesses. After the statements of the disputing parties are rigorously reviewed, the chief and his council of elders pronounce judgement. If the judgement enjoys a unanimous consensus among the chief and elders, it is delivered on the spot. If otherwise, a judgement would have to be deferred to a later time when consensus is reached (Ackom, 2015). Accordingly, punishments range in degree from apologizing to paying compensation to victims, to atoning for their misdeeds by performing the requisite animal sacrifice (Ackom, 2015).

### **Intent of the Traditional Justice System**

The traditional penal system was focused on ensuring social equilibrium and solidarity by securing compensation for a victim as opposed to focussing on the punishment of the offender. Brodie Cruickshank in his book, "Eighteen Years in The Gold Coast of Africa", observed that the courts applied basically the same kind of punishment, fines of varying amounts, to nearly all the cases that they heard (Cruickshank, 1853). As a result, imprisonment as a form of punishment was not aboriginal (Ackom, 2015). Again, the objectives of the traditional justice system were never aimed at the reintegration of offenders since offenders were not imprisoned or segregated from the community. As indicated above, individuals found guilty were sentenced to apologizing, paying compensation to victims, or atoning for their misdeeds by performing the requisite animal sacrifice (Ackom, 2015).

While this general view of the nature and social structure of Gold Coast is informative, a more focused discussion on one of the ethnic groups (the Ashantis) would help shed more light on the dynamics discussed above. The next section of this chapter will discuss the characteristics of the Ashanti justice system.

## **The Ashantis**

### **The Legal Arrangement**

The Ashanti state was theocratic. Hence, the law component of the legal system was made up of rules believed to have been designed by Nyame (God) and ancestors. Being theocratic, Ashantis invoked religious rather than secular-legal postulates. Therefore, what the modern state views as crimes, the Ashantis viewed as sins. The chief, who was considered the custodian of these laws, was mandated to dispense justice. He was believed to be the representative of God and the ancestors on earth. If the chief fails to punish such acts that were against the rules, he could be invoking the anger of God and the ancestors and would likely to be removed from his position (Ackom, 2015).

### **Court Proceedings and Penal Arrangement**

Among the Ashantis, families or lineages settled disputes between individuals. Nevertheless, such disputes can be brought to trial before a chief by uttering the taboo oath of a chief (Edgerton, 1995). When this happens, the dispute is brought before the Council of Elders and the chief's court where the litigants from each state their side of the story. Anyone present can cross-examine the defendant or the accuser, and, if the proceedings do not lead to a verdict, a special witness is called to provide additional testimony to help arrive at a conclusion. Among the Ashantis, capital crimes could include murder, incest within the female or male line, having intercourse with a menstruating woman, rape of a married woman, adultery with any of the wives of a

chief and insults against a chief or the court. However, as a form of punishment, capital punishment was rarely used. Cursing the chief or calling down powers to harm him is considered an unspeakable act, and anyone who does so must pay a heavy indemnity, but it is not considered a capital offense (Ackom, 2015).

Ashantis believed that it is only God, the ancestors or the chief who can pronounce a death sentence on another Ashanti. As a result, Ashantis were nauseated by murder: since that means usurping the authority of Nyame, the ancestors and the chief. In a murder trial, intent must be established. If the homicide is accidental, the murderer pays compensation to the lineage of the deceased (Ackom, 2015). Formidable as it was, this legal and penal system was centered on ensuring social stability, but this changed with the emergence of the British as the colonial power. Below, is a narrative on how Gold Coast came under the British rule and a discussion of how the colonial justice system, both in Africa and more specifically the Gold Coast, worked.

### **How Gold Coast Became a British Colony**

The Portuguese were the first to arrive in Gold Coast. By 1471, under the patronage of Prince Henry the Navigator, they had reached the area that was to become known as the Gold Coast, as it was known to be a source of gold. The initial Portuguese interest in trading for gold, ivory, and pepper had so increased that, in 1482, the Portuguese built their first permanent trading post on the western coast of present-day Ghana. The Portuguese position on the Gold Coast remained secure for almost a century (Miller, Vandome & McBrewster, 2009). During the seventeenth and

eighteenth centuries, other adventurers, first the Dutch and later the English and Swedish, were granted licenses by their governments to trade overseas. On the Gold Coast, these other European competitors built fortified trading stations and challenged the Portuguese. Sometimes the Europeans were also drawn into conflicts with local inhabitants since they had developed commercial alliances with local chiefs (Miller, Vandome & McBrewster, 2009).

By the early 19th century, the majority of the Gold Coast's fortresses were under British control. They bought all of Denmark's Gold Coast territory in 1850 and purchased the Dutch fort at Elmina in 1872. Seeking a peaceful environment in order to trade for raw materials, Britain viewed the Ashanti's (one of the ethnic groups) efforts to assert dominance over other ethnic groups as a threat to Britain's commercial interests and began to intervene in local conflicts. The Ashanti, on the other hand, saw British interference in its conquered territories as an infringement on its sovereignty and fought back. In 1844 the British signed a political agreement with a confederation of Fante states. Known as the Bond of 1844, the agreement extended British protection to the signatory states and gave Britain a degree of authority over them. In subsequent years, additional coastal and interior states signed the Bond. However, one group, the Ashantis' were unhappy because British power along the coast had closed their access to the coast (Miller, Vandome & McBrewster, 2009).

The Ashanti people, responding to this British intrusion, surrounded the British territory and then invaded in 1873. After initial successes, the Ashanti were forced to retreat. An attempt to negotiate a peaceful conclusion was rejected by the British

commander, Sir Garnet Wolseley. In January 1874, a large expeditionary force led by Wolseley fought its way into an Ashanti territory, capturing the Ashanti capital, Kumasi and burning it to the ground, temporarily curbing the Ashanti rebellion (Miller, Vandome & McBrewster, 2009).

In a treaty that ended the war, the Ashanti recognized British sovereignty over the coast, agreed to pay war reparation costs and renounced influence over all the territories under British protection. In return, the British permitted the Ashanti commercial access to the coast. In July 1874, the British proclaimed the coastal territories as the Gold Coast Colony and moved their administrative center from Cape Coast to Accra. Meanwhile, the Ashantis' were still problematic, as they continued to rebel against the British rule. This rebellion was finally put down in 1901, and Ashanti was proclaimed a British colony. In 1902 Ashanti and the Northern Territories were annexed to the Gold Coast Colony. Thus, Britain became the sole power in the political and economic affairs of what is now Ghana (Miller, Vandome & McBrewster, 2009).

### **The Economic Institution Under Colonial Era**

By 1850 the economy was no longer based on subsistence. The British had instilled the growth of cash crops for export and for sale at the markets. This change in the economic arrangement led to the creation of a class-based society. The British, occupying the highest position on the social and economic ladder, determined the flow of economic benefits. The majority of Gold Coasters, who were peasants, found



themselves occupying the lowest position on the economic and social ladder (Miller, Vandome & McBrewster, 2009).

During the Colonial period, the British, in their quest to maintain their position on the economic ladder, put in place several measures to ensure this. These include: (1) the introduction of new techniques and procedures to increase production; and (2) the encouragement of an upsurge in European companies, which they controlled. These actions devalued the labor of indigenes as well as discouraging any attempt by the indigenous people to start their own business and compete with those established by the British (Miller, Vandome & McBrewster, 2009). As the economic institutions changed, so did the traditional means of education.

### **The Education Institution Under Colonial Era**

During this period, the British did not invest in providing education for the people of the 'Gold Coast'. They only needed a few educated people to fill lower-level civil service jobs. Consequently, they educated a few people only for the purposes of filling these positions. Before the struggle for independence in the 1940's and '50's, there were no institutions of higher learning in the "Gold Coast". As Christian missionaries realized that in order to spread the word of God, they needed well-educated local assistants, they began to provide some basic level of education (Howard, 1999).

### **The Religious Institution Under Colonial Era**

During this colonial era, the Gold Coast was introduced to a new religion, Christianity, by some European missionaries. This new religion was a monotheistic worship (Belief in One Supreme God), which was in direct opposition to the nature of worship known to Gold Coasters (Polytheistic Worship-Belief in Several Deities and Ancestral Worship). The effect was that the judicial powers of the chief were, to some extent, undermined as these powers were partially premised on the fact that the chief represented or served as an intermediary between these Gods and mankind. As the Chief's Traditional court jurisdiction waned, the British courts gained their hold on the justice system (Pobee & Mends,1977).

### **The Emergence of British Court Systems**

As the colonial power, the British did not intend to go beyond their economic interest in Gold Coast and make the region a geo-political extension of Great Britain. Rather, they delegated authority to the local power structure. Thus, they ruled Gold Coasters indirectly and traditional authority was incorporated into state governance and was used to implement certain agendas of the government. However, as colonization of Gold Coast continued, the British sought to establish more control over Gold Coasters. This had the effect of subjugating the Colonial Gold Coast to a binary legal system.

In 1853, a Supreme Court was established in the Gold Coast and colonial rule imposed on 24 July 1874. In 1876 a Supreme Court ordinance was passed and this marked the beginning of the modern legal system in the Gold Coast. Section 14 of the

said Ordinance stipulated that the Common law, the doctrines of equity, and the statutes of general application which were in force in England at the date when the colony obtained a local legislature, the 24th day of July 1874, shall be in force within the jurisdiction of the Court. Section 19 of this Act, further provided for the application of customary law. It noted that, nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any law or custom existing in the said colony and territories subject to its jurisdiction, such law or custom not being repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any enactment of the Colonial legislature. This was in conformity with the emerging British colonial policy of indirect rule (Amankwah, 1970).

Thus, the traditional courts, which used the customary laws as its reference, and the British courts, which referred to the English common laws, were running concurrently. But, as indicated in the quote above, British law established its authority whenever a conflict arose between Gold Coast customs and the British normative system.

### **Functions of the Traditional and British Courts During the Colonial Era**

The traditional courts, during the colonial era, handled, for the most part, matters relating to the traditional and customary institutions and their practices. Buah (1980) opines that these courts were run in accordance with what was understood to be customary law and were presided over by chiefs and their councilors. However, as

pointed out above, due to the measures of indirect rule, tribal authorities operated under the general direction and control of the colonial district commissioner. Odotei (2003) further denotes that the ordinances passed in 1878 and 1883 initiated legislative interference and control over chieftaincy matters as well as limiting the supreme power of the chief. The results were that: (1) decisions of the native court were now subjected to appeal in British courts; and (2) the colonial governor gained unquestionable powers to remove a chief without any reference to his council or subjects (1988).

Consistent with this agenda, the British extended their legal control over major crimes leaving the vast majority of crimes of violence and crimes against property to be heard in the chiefs' courts, or the "traditional courts". The British, as will be pointed out in the next section of this thesis, feared to tread into matters relating to birth, marriage, death and inheritance. The native population perceived these issues to be within the purview of "customary law" and should be handled by the traditional court. However, the colonial power retained the right to intervene where the judgments of chiefly courts determined to be "repugnant" or in breach of "natural justice".

The next section of this chapter discusses how and when the customary and English laws were applied.

### **Customary Laws Under the Colonial Era**

In his work, "Explaining the legal Pluralism in African Countries: Ghana as a Case Study," Justice Brobbey (n.d) points out that, generally, the British did not place importance on the traditional laws as compared to the English laws. In some areas, the

received English laws were considered more important than the traditional laws. As a result, even though customary laws were applied in traditional courts, the 1876 Supreme Court Ordinance did not define the meaning of customary law. However, it did define when customary law would apply as follows: (1) customary laws shall be deemed applicable in matters where the feuding parties are natives of a particular ethnic group; (2) in cases and matters relating to marriage, the tenure and transfer of real and personal property in an inheritance; and (3) in matters between natives and Europeans, where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

Harvey (1967) notes that, since customary laws differed from one ethnic group to the other, the British Privy Council concluded that before any customary law was applied, the court must verify that it was indeed in existence. They did this by calling witnesses acquainted with native customs and having them verify that the custom was, in fact, a customary law. However, if a customary law is proven to be existent, it would still not be applicable if it was against the "common sense, equity and the good conscience" or repugnancy rule. In these cases, British law would be applied. (Daniels, 1964).

### **The Justice System Under the Colonial Era**

Contrary to the type of punishment that existed in the pre-colonial era colonial powers introduced a new system of punishment, imprisonment, to ensure social control. The British established prisons in all garrisons and administrative outposts during the

colonial era. This was mainly to consolidate and expand their colonial authority (Bernault, 2003). This new form of punishment would lead to: (1) the straining of family ties which was a central part of the Gold Coast culture; and (2) the termination of the protection an offender would secure from their family in traditional courts. In these prisons, prisoners were crammed into unsuitable rooms sometimes having as many as 15 people in one room. There was no accommodation for the various grades of prisoners. Debtors, political prisoners, prisoners awaiting trials were all huddled into one room at night and penned like sheep during the day within a small concrete yard under a galvanized iron roof (Seidman 1969).

In addition to imprisonment, corporal punishment was introduced. Corporal punishment was used extensively both as an alternative to and in conjunction with, the punishment of imprisonment. Corporal punishment was administered by the dreaded cat-o'-nine tail. The notorious cat-o-nine-tail was a brutal instrument that cut through the unprotected body of the victim (Seidman 1969). Thus, punishment during this era was not a response to crime in the customary sense, but more a social control mechanism (Garland, 1991).

While this may have felt like a never-ending nightmare, Gold Coasters could heave a sigh of relief when, on March 6th, 1957, a glimmer of hope and liberation from the oppressor's rule knocked on their doors. The Gold Coast gained independence and its name was subsequently changed to Ghana: a name adopted from the ancient Ghana Empire which covered the Sudan-Mali area.

The journey to independence started with resistance of the Gold Coasters to the British rule. Factors that influenced this resistance were the: (1) plights of soldiers returning from the Second World War; (2) plights of farmers; and (3) plights of the elites. Soldiers returning from the World War II had exposure to new experiences when they fought along side white soldiers. They saw that they were equal to the white in every respect. On their return, they began to challenge their internalized feeling of inferiority. Soldiers, before their return to Gold Coast, were promised a pension, gratuities and jobs, but came to realize they would receive almost next to nothing. Meanwhile, the British ex-service men were treated well and this made the native returning soldiers angry. Farmers were also angry about the fact that the prices for their crops were extraordinarily low on the world market. On the other hand, elites, who had travelled overseas to receive their higher education, didn't like the idea that the colonial government prevented their participation in national issues. The colonial government instead preferred to work with the chiefs because they were illiterates and could be easily manipulated. The confluence of these problems made Gold Coast resist British rule, which led to their independence (Howard, 1999).

### **Statement of Problem**

As outlined in the above discussion, the social and justice system of the Gold Coast changed dramatically under British rule. This research is focused on several aspects of this change with regards to the justice system. First, it examines what people who have knowledge about the system believe to be the reason for the changes in the

justice system in the colonial era. Was it for efficiency or was it to control the indigenous population? This research also has an interest in finding out if respondents believe the current justice system is different from what existed in the colonial era and whether or not the colonial justice system inherited from the British will change or remain intact. Finally, subjects were asked if Ghana's justice system would have been different without colonization and what recommendations the respondents may have for changing the current penal system.



## **Chapter Two**

### **Sociological Theories of Social Change**

As discussed in chapter one, the justice system in Ghana changed dramatically from the pre-colonial to colonial times. This chapter will consider the change from the various theoretical perspectives that may explain the changes that took place. First, of Durkheim's theory, with regards to the structure of a traditional, mechanical solidarity, society and its transition to a modern, organic solidarity, society, will be examined. Second, Weber's theory of bureaucracy and rationality will be discussed. Third, Foucault's disciplinary society will be presented. Finally, the various theories of punishment will be presented in order to determine which philosophy of punishment prevailed in the various eras in Ghana's history. Each theory, Retribution, Deterrence and Rehabilitation will be examined as to it being used as a form of punishment in the pre-colonial and colonial eras.

#### **Emile Durkheim**

Emile Durkheim's evolutionary study of society provides a possible explanation for the changes in Ghana's justice system. In his study, he shows how societies maintained social integration after modern economic relations replaced traditional bonds. Durkheim noted that there are two forms of society- Traditional and Modern. According to Durkheim, traditional societies are characterised by mechanical solidarity. This solidarity is usually based on kinship ties or familial networks, that is,

close personal ties and traditions connect people. In this society, individuals live largely with the same orientation to society. The work they engaged in, the values they held, and the things they held as sacred were all similar. The traditional society is characterized by little or no division of labor, with only a few persons in the clan or village having specialized functions (Vold, 2010). Consequently, there is little or no need for individual talents since the solidarity of the society is based on the uniformity of its members (Vold, 2010).

Laws and punishments in the traditional society are derived from traditions or customs and they are focused on maintaining social solidarity and conformity to the norms. Durkheim opines that this situation is changed as the population increased. As the number of people in a given area increases, so do the number of interactions in society and these interactions become more complex. Thus, the simple and identical interactions are replaced by complex ones and the roles become more diversified. When this happens, society transitions from traditional into a modern society and a division of labor occurs (Durkheim, 1897/1951)

### **Max Weber**

Weber argues that when society transitions from traditional to a modern society, traditions and affective ways of doing things are replaced by a system based upon rationalization and rational forms. Rationality or rationalization signifies the development of a methodological style of life and a set of social institutions oriented around rules and means-ends relationships. It is a process by which modern society has

increasingly become concerned with efficiency, predictability, calculability and dehumanization. Efficiency refers to achieving the maximum results with a minimum amount of effort. Predictability, on the other hand, is the desire to predict what will happen in the future. Calculability is the concern with numerical data, i.e., statistics and scoring. Dehumanization refers to employing technology and bureaucratic organization as a means to control human behavior. By this, tradition's hold on society is reduced so that, instead of human behavior being motivated by customs and traditions, rationalization is instilled and leads to behaviors that were guided by reason and practicality (Sutton, 2000).

In the modern society, as delineated by Weber, the type of authority used is the Legal-Rational Authority. Legal-rational authority could be understood, in part, as the historical solution to traditional authority. For instance, whereas laws are derived from customary need in the traditional society, in the modern society they are derived from bureaucratic needs under legal- rational authority. Again, whereas the administrative model under the traditional authority is household, under the legal-rational authority it is bureaucracy (Sutton, 2000).

The bureaucratic administration under the legal-rational authority represents domination through knowledge. It is a means to some political or economic goal that is designed to persist regardless of whose interest it serves or what policies it is required to implement. That is why, even though political leaders or CEOs may come and go, the bureaucratic structures that serve them can survive the radical changes in the regimes and policies. As an authority that dominates through knowledge, a bureaucratic

administrative structure is constructed to be almost infinitely reproducible. As government grows, it absorbs new territories and incorporates new functions and the ruler's chain of command can be extended simply by cloning the existing administrative structures. This is referred to as economies of scale — once government bureaucratizes operations, the marginal cost of expansion declines. Consequently, bureaucrats are not loyal to their leaders as persons, but to the rules that define the authority of the leader's position and ultimately to the set of principles that define the hierarchy (Sutton, 2000).

These set of principles that define bureaucracy in modern officialdom functions in this manner: (1) the regular activities required for the purpose of the bureaucratically governed structure are distributed in a fixed way as official duties; (2) the authority to give commands, required for the discharge of these duties, is distributed in a stable way and is strictly delimited by rules concerning the coercive mean, physical or otherwise, which may be placed at the disposal of officials; and (3) the methodological provision is made for the regular and continuous fulfilment of these duties and for the execution of the corresponding rights- only persons who have the generally regulated qualifications to serve are employed (Weber, 1921).

Max Weber also noted some precarious elements of bureaucracy. He argued that the impersonality, which is so important in attaining efficiency of the organization/government, is dehumanizing. Thus, this process of rationalization which characterizes modern society, drives out the warmth and humanity of social life, which are the very things that give meaning to human existence (Weber, 1921).

Consistent to this end, bureaucracy only embraces people who possess the required skills to perform certain tasks and it neglects those who do not. It, therefore, creates stratification in society. Those who wield the power to recruit become the ruling class, those who have the skills to be recruited become the middle or working class and those who do not have the requisite skills become the lower class. Thus, society becomes stratified based on power, domination, and or wealth.

Additionally, Weber opines that rationalization and bureaucratization impact sociocultural systems negatively. Given that, by its very nature, bureaucracy generates an enormous degree of unregulated and often unperceived social power. So that, power is concentrated in a few hands and those who wield this power, control the quality of our life. In other words, bureaucracy tends to result in an oligarchy, in which the rule or the concentration of power is in the hands of few officials at the top of government operations (Elwell, n. d.).

### **Michel Foucault**

The idea of an oligarchy, the rule by a few officials and how these officials control the quality of life, is the basis for Michel Foucault's Disciplinary Society. In his lecture on "Security, Territory and Population" (1978), Foucault sought to analyze how these government officials utilize power relations through disciplinary institutions to produce the type of subjects they require (Curtis, 2002). To aid this analysis, Foucault coins the term Governmentality. Governmentality is a portmanteau word derived from the phrase "government and rationality". It refers to ways governments

try to produce the citizen best suited to fulfill those government policies (Curtis, 2002). This concept is often used by Foucault in a wider sense. One which is not limited to state politics, but also includes a wide range of control techniques, from one's control of the self to the biopolitical control of populations (Curtis, 2002).

Foucault's concept of governmentality provides a different understanding of power: one that is not only focused on the hierarchical, top to down power of the state, but also includes the forms of social control in the disciplinary institutions (schools, hospitals, psychiatric institutions, prisons, churches etc). According to him, governments can manifest their power by producing or suggesting the type of knowledge to be contained in certain discourses in these disciplinary institutions. Individuals within these institutions are not only made to engage in these discourses, but also made to internalize them. Consequently, these discourses have three effects. First, they guide the behaviour of individuals and by extension the population. Secondly, they shape the souls of the people into being the type of citizen required in order to fulfil the demands of the political economy and government policies. Finally, they enable individuals to govern themselves. Thus, power can be applied in such a way that provides a more efficient form of social control, that is, one that is invisible yet very efficient (Curtis, 2002).

In a genealogical study of the development of imprisoning criminals, Foucault contended imprisonment is a vehicle for a more effective means of control in a modern society — "to punish less but certainly to punish better". For instance, in

LCon Faucher's House for young prisoners in Paris, this was how discipline, education and religion were used to shape the souls of the prisoners:

At the first drum-roll, the prisoners must rise and dress in silence, as the supervisor opens the cell doors. At the second drum-roll, they must be dressed and make their beds. At the third, they must line up and proceed to the chapel for morning prayer. The prayers are conducted by the chaplain and followed by a moral or religious reading. Work starts at a quarter to six in the summer, a quarter to seven in winter. The prisoners go down into the courtyard where they must wash their hands and faces, and receive their first ration of bread. Immediately afterwards, they form into work-teams and go off to work. At ten o'clock the prisoners leave their work and go to the refectory. At twenty minutes to eleven, at the drum-roll, the prisoners form into ranks, and proceed in divisions to the school. The class lasts two hours and consists alternately of reading, writing, drawing and arithmetic. At five minutes to one, at the drum-roll, they form into work teams. At one o'clock they must be back in the workshops: they work until four o'clock. At four o'clock the prisoners leave their workshops and go into the courtyards where they wash their hands and form into divisions for the refectory. Supper and the recreation that follows it last until five o'clock: the prisoners then return to the workshops. At seven o'clock in the summer, at eight in winter, work stops; bread is distributed for the last time in the workshops. For a quarter of an hour one of the prisoners or supervisors reads passage from some instructive or uplifting work. This is followed by evening prayer. At half-past seven in summer, half-past eight in winter, the prisoners must be back in their cells after the washing of hands and the inspection of clothes in the courtyard; at the first drum-roll, they must undress, and at the second get into bed. The cell doors are closed and the supervisors go the rounds to ensure order and silence (Foucault;1975, pg 6,7).

Thus, in this modern way of punishment, the focus is on shaping the souls of the offender rather than destroying the body, through physical punishment.

At the core of Foucault's picture of modern disciplinary society (power) are three primary techniques of control: hierarchical observation, normalizing judgement and the examination. To a large extent, control over people (power) could be reached by observing them. For instance, the panopticon design for prisons, is built so that inmates are separated from, and invisible to all other inmates, yet, they

remain visible to a monitor situated in a central tower. Monitors will not, in fact, always see each inmate, but could at any time. Thus, since inmates never know whether or not they are being observed, they must act as if they are always objects of observation. Consequently, control is achieved more by the internal monitoring of those controlled than by heavy physical constraints. In order for the monitoring to be both possible and efficient, there is a need for relays of observers, hierarchically ordered, through whom observed data passes from lower to higher levels (Foucault, 1975).

Another technique, normalizing judgement, reveals that the modern disciplinary system is concerned with what people have not done, a person's failure to reach a required standard. The goal is not revenge, as in the case of tortures of premodern disciplinary systems, but to reform the individual to be able to live by the society's standards or norms. That is to say, discipline through imposing precise norms (normalization) is quite different from the older system of judicial punishment, which merely judges each action as allowed or not allowed by the law and does not say that those judged are normal or abnormal.

Still another feature of modern power is the examination. The examination is a method of control that combines hierarchical observation with normalization judgement. It provides both the truth about those who undergo the examination and it controls their behaviour. The examination also situates individuals in a field of documentation. The results of the examination provide detailed information about the individuals examined and it allows power systems to control them. Thus, on the



basis of the records, those in control can formulate categories, averages and norms that become the basis for knowledge. The examination turns the individual into a case, in both senses of the term a scientific example and an object of care (Foucault, 1975).

### **Application of the Theories to the Changes**

These descriptions of a traditional society as provided by Durkheim were very palpable in the pre-colonial Gold Coast. For instance, during the pre-colonial era, the solidarity among Gold Coasters was based on kinship or ethnic ties and familial networks. There was little or no division of labor among members of the society, only the chief had specialized functions of representing the political and legal authority of the people. In the pre-colonial era, the legitimacy of the political rule of the chief is claimed for and believed in by virtue of the sanctity of age — old rules and powers. An individual's right to rule or become a chief is determined by kinship or blood ties, from one ruler to the next, which personifies the continuity by tradition.

The precolonial era was marked by traditional authority. This type of authority permits no distinction between the private person of the ruler and his or her public role. The state treasury was treated as the ruler's personal fortune. The ruler personifies the political regime and followers bond to the ruler by ties of personal loyalty. In this system, the ruler chooses close relatives to carry out important task eg. collecting tax. Thus, no appointments to these positions were not based on qualification or competencies of the individual. In the pre-colonial era, the ultimate

justification for obedience was tradition and customs. This situation is further highlighted by the fact that laws used during the pre-colonial era were derived from customs.

However, these arrangements were altered as Gold Coast transitioned from traditional to a modern society under British rule. The cause for this transition was not an increase in population as predicted by Durkheim, but perhaps an imposition of political necessity (Colonial rule). A view consistent with Max Weber's argument on the emergence of a modern society.

Weber's explanation of the characteristics of modern society was evident as Gold Coast transitioned from traditional to colonial rule. During the colonial era, affective ways of doing things were replaced with rationality. Given that, the British introduced a methodological style of life and a set of social institutions oriented around rules and means-ends relationship. For instance, the British assigned roles based on qualification and not kinship ties. The institutionalization of British Courts and laws brought about some predictability in the outcome of cases because the received laws stipulated the specific sanctions for specific cases. This ensured a standardized and predictable justice system as opposed to the arbitrary forms of sentencing that characterized the pre-colonial era.

Under British rule, customary laws were relegated to the background. The British did not place importance on the customary laws as compared to the English laws. Customary laws were only applicable in three instances. Firstly, in matters where the feuding parties are natives of the said colony or territories. Secondly, in causes and

matters relating to marriage, the tenure and transfer of real and personal property, inheritance and testamentary dispositions. Finally, in causes and matters between natives and Europeans, where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law. This limiting of the role customary law could play was, in part, because customary laws lacked the ability to support the bureaucratic needs of the Colonial administration. It appears that the British were enforcing the English laws to satisfy the bureaucratic needs of the colonials rather than enhancing the customary traditions of the people. This situation gives credence to Weber when he argued that traditional authority is replaced by legal- rational authority when a society transitions from traditional (pre-colonial era) to a modern society (Colonial era).

As Weber's theory implies, it was evident that this bureaucratic administration introduced by the British was not only used to provide a standardize and a predictable justice system but also used to also dominate indigenous people based upon a calculable knowledge. For an illustration of this of knowledge being applied to indigenous people, the following example is provided. Upon their arrival, the British noticed that Gold Coasters subscribed to a polygamous system of marriage. Troubled by the fact that this system was creating a social situation whereby some British men may not have access to an unmarried woman, the British made bigamy a crime. This law was designed to regulate and limit the marital ratio between men and women, making it one man to one wife. This illustrates that the British made use of their authority as well as their knowledge about marital ratios in designing legislation to guarantee

provisions for their sexual needs. This scenario is a quintessential evidence of the fact that laws become based upon empirical data rather than the customs and desires of the traditional population.

Another consequence of the bureaucratic administration introduced by the British was the stratification that came to characterize the colonial era. As one of the fundamental principles of bureaucracy was that people be appointed to an office based on their qualification, the pursuit of formal education became crucial. Those who were able to obtain a formal education got to occupy these positions and those who did not were just relegated to the background. The colonial Gold Coast, as a result of this educational requirement, became stratified socially, with the British occupying the topmost ruling class positions on the social and economic ladders. They were followed by a middle class comprised of the traditional leaders (Chiefs), and professionals such as doctors, lawyers et al. At the bottom of this hierarchy were the peasants who had nothing but their labor to sell. The British, with their position as members of the ruling class, determined the flow of economic and social relations as they wielded power. With economic, social and political power concentrated in the hands of the British, they controlled the quality of life, as predicted by Weber. That is to say that, the colonial Gold Coast was now an oligarchy and Foucault's theory seems applicable.

In this system of oligarchy, as discussed by Foucault, the British utilized power through disciplinary institutions, to produce the type of subjects they required. The new political economy required the existences of two main groups: (1) colonial masters; and (2) colonial subjects. The colonial masters controlled the life of the colonial subjects and

determine their economic gains. In the bid to ensure that these two groups are maintained, the British introduced the punishment of imprisonment as a form of punishment to produce the colonial subjects required. Imprisonment, therefore ensured that all persons considered to be a potential threat to the British rule were separated and punished. It was hoped that many people would be deterred from any form of rebellion due to the fear of being separated from the protection and bond between them and their family or kinsmen. Also, the British system of imprisonment served as an efficient tool for the social control of the indigenous population in another way. Prisoners were monitored while in the prison and were made to engage in routines that would shape their souls into accepting the colonial domination that ensued. Thus, Foucault's ideas about how power is wielded by the few seems appropriate in the case of Ghana.

### **Theories of Punishment**

In terms of the nature of punishment that characterized the two eras, it appears that in the pre-colonial era, punishments were guided by the retributive theory. Given that, the motivation for the punishment was to hold offenders accountable to both the victim and society. On the other hand, punishment during the colonial era appears to be premised on deterrence, which emphasize the need to deter offenders and other members of the society from rebelling against the British power. Below is a discussion on the Retribution, Deterrence and Rehabilitation theories of punishment.

## **Retribution**

Retribution per the oxford dictionary is defined as a punishment inflicted on someone as vengeance for a wrong or criminal act. Therefore, the retributive theory of punishment is based on the concept of *lex talion*— the law of retaliation.

Retributive theorists opine that human beings are moral beings with social and moral responsibilities for which they should be held accountable. Consequently, a deviation from these responsibilities demands an unequivocal and repressive punishment in order to put society and offenders in order. Punishment, therefore, for retributive theorists refers to “an act of vengeance; for breaking the moral norms of the society” (Vold, 2010). Retributive punishment is a moral doctrine. It holds that the infliction of punishment is only justifiable when there is a break in this moral responsibility.

Proponents of retributive punishment argue that when punishment is premised on retribution, it does several things. First, it ensures that there is stability in society, as members of a society will live amicably and not bear grudges against each other since they are certain that justice had been or would be served in a case of wrong. Second, it sustains the morale of conformists since those who voluntarily comply with the rules are provided with some assurance that offenders will be punished. (Grupp, 1971). Third, it prevents crime as people are certain that they would be punished, per their offense. (Grupp, 1971). Forth, it confirms that human beings are moral beings because punishment is a sane man’s right; to punish a man is to treat him as equal (Grupp, 1971). The aim of the retributive theory aligns well

with the pre-colonial, traditional society. By punishing offenders the community makes the criminal realize the full gravity of what they have done, and not just inflicting pain -for-pain's-sake (Grupp, 1971). Further, by finding agreement between the offender and the offended the social harmony of the community remains intact.

### **Deterrence**

Deterrence is the action of discouraging an event through instilling doubt or fear of the consequences. The deterrence theory of punishment can be traced to the early works of classical philosophers such as Thomas Hobbes (1588–1678), Cesare Beccaria (1738–1794), and Jeremy Bentham (1748–1832).

Beccaria established that human beings are rational and act out of free will. They make calculated decisions about which behaviors to engage in. They weigh the cost and benefits of an action in order to decide how to proceed. Therefore, since criminals have calculated that the benefits of their criminal acts outweigh the cost, it prevents them from committing the crime. In this equation, society, through laws and punishment, must establish the fact that the cost of the offender will outweigh the reward of the criminal act (Grupp, 1971).

In the deterrence philosophy, the focus centers on the offender and finding the right calculus for deterring that offender. Victims and social harmony are secondary concerns. This reasoning aligns more with the colonial era than the social harmony stressed by the pre-colonial era.

## **Rehabilitation**

The concept of rehabilitation" which means the process of helping a person to readapt to society or to restore someone to a former position or rank is largely pushed by adherents of the Positivist School of criminology (Grupp,1971). The aim of rehabilitation is to avoid future crime by giving offenders the ability to succeed within the confines of the law (Grupp,1971). Rehabilitative measures for criminal offenders usually include treatment for afflictions such as mental illness, chemical dependency, and chronic violent behavior. Rehabilitation also includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market (Grupp,1971).

The concept of rehabilitation finds its root from the work of Cesare Lombroso's assertion that criminality is innate, an inexorable tyranny of one's own organic constitution, inherited from his ancestors. Enrico Ferri, expanded Lombroso's that the tendency to commit a crime is innate. He contended that social factors play a major role. In this light he argues for the need to ensure that sentencing would be focused on providing the offender with the apparatus to be able to fit into, or be in congruence with, the demands of the society they live in.

Central to the rehabilitation argument is the fact that punishment should be indeterminate. They argue that a congenital or pathological criminal cannot be locked up for a specific number of years in an institution, but should remain there until they are adapted to the normal life of society (Grupp,1971). They also make the case that punishment should be therapeutic and not repressive. Measures employed to treat



the offender should serve a therapeutic function, by effecting changes in the behavior of the convicted person, in the interest of his own happiness, health and satisfaction, and social defense. Thus, the secret to the success of a penal system is the replacement of the punitive attitude with a therapeutic attitude (Grupp,1971). Punishment should be meted out only after a scientific diagnosis of the criminal has been conducted. This would enable trained workers to present before the judge what they have medically learned about an offender, helping them know how best to treat the offender. (Grupp,1971).

With this backdrop, proponents of the rehabilitation philosophy of punishment opine that rehabilitative punishment: (1) allows crime to be treated and not repressed; (2) helps in the prevention of crime; and (3) treats offenders so, they are reclaimed for social usefulness and unlikely to relapse to crime (Grupp,1971).

The workings of the rehabilitative philosophy seem to align more with the colonial era. Although the key to rehabilitation is to treat the offender and reintegrate them into the society seems to align with the social harmony of the pre-colonial era, the actual effect of treatment is to inculcate in the offender the values and norms of the colonial society. Given, in the colonial a system, the British normative system was being imposed, the rehabilitation of offenders appears to be more a system designed to coerce an offender to submit to that dominant system. The treatment of the rehabilitative philosophy becomes Foucault's social discipline in the penal system of the colonial era.

### **Summary**

In this chapter, three theories of social change were discussed and applied to the changes in the social structure of Ghana. Also, theories of punishment were discussed so as to identify which theory of punishment would have been prevalent in the two eras, precolonial and colonial era.

## **Chapter Three**

### **Methodology**

This chapter deals with the methodological aspects of the study – the various techniques and methods used in collecting and analyzing data for this research. The specific areas discussed in this chapter are: (1) The Nature of the Study; (2) Sample Selection; (3) Characteristics of the Sample Participants; (4) Data Collection Methods; (5) Validity Testing; (6) Working Definitions; (7) The Procedure for Analysis of Data; and (8) Participant's Responses to Key Questions.

#### **Nature of the Study**

This research is explorative and descriptive in nature. As indicated in chapter one, this study is primarily focused on examining what persons, familiar with the justice system of Ghana, think caused the change in the justice system during the Colonial era. It examines whether or not their views on the causes of the change most correspond to the theory of either Durkheim, Weber or Foucault. These groups of people were chosen for this research because details of the justice system may not be known to all, so only people who work within, or are familiar with, this structure were contacted.

#### **Institutional Review Board (IRB) Approval**

This project was proposed to Northern Arizona University Institutional Review Board and was given approval with an exempt status. As such, it was determined that

this research posed minimal risk to participants. Participant privacy was protected as no identifiers, like names, were required and all responses were discussed in the aggregate. Respondents who participated in the electronic surveys had their email address detached from the survey response and responses were stored on a Google drive, which was password protected. Those who participated using the Skype interview were just audio recorded in order to protect their identity. These recordings were saved on a computer which was also password protected. It was explained to each participant that they could withdraw from the study at any time, without any penalty to them.

### **Sample Selection**

Subjects for the study were selected using a convenience/snow ball sampling technique. Friends of the investigator, who were knowledgeable about the justice system in Ghana, were contacted, provided with a synopsis of the study, and asked if they were willing to participate in the study. Upon a positive response, subjects were presented with the option of either participating via a Skype interview or an electronic survey and asked to provide their email address (both surveys contained the same questions). Those providing this information received an interview or survey guide which presented the questions contained in the interview instrument. At the completion of their interview or survey, respondents were asked to refer any friends, who were acquainted with the justice system, to the investigator. Those persons were then contacted. This process was repeated until referrals were exhausted.

## **Participants**

The total number of subjects was thirty. Nine subjects (30%) were females and the remainder, 21 (70%) were males. In terms of the profession of respondents, there was one judge (3%), 17 lawyers (57%) and 12 persons (40%) who had knowledge about the Ghanaian justice system. This latter group was comprised of 11 (37%) law students and one (3%) historian. With regards to the age of participants, ages ranged from 21 years to 35 years. The mean age for this sample was 26, while the median and the mode were both 28. In relation to the geographic location where subjects were raised, nine respondents (30%) were raised in Accra, the capital of Ghana. Seven subjects (23%) were raised in the Ashanti region. Central, Upper East, Upper West, Northern, Brong-Ahafo, and the Western Region had only one person (3%) each. Six of the respondents indicated that they were raised in Ghana, without any specific reference to a region. As these subjects could not be coded by regions, they were not included in the analysis of geographic locations and their relationship to certain variables. With regards to where subjects obtained their degree, 29 subjects (97%) obtained their degree in Ghana, with only one respondent (3%) who had studied in London, United Kingdom.

*(Tables containing the frequency distributions for each variable in the interview instrument can be found in Appendix B.)*

## **Data Collection**

### **The Surveys**

There were two survey techniques used in this research. Either a Skype interview was conducted or an electronic questionnaire was sent to the respondent. Each subject in the study was personally contacted either via phone call or text message. They were briefed on the research and then asked if they were interested in participating. If they agreed, they were presented with the option of either participating via Skype or an electronic survey. As per their preference, they were either sent the electronic survey or they arranged to participate in the Skype interview.

The Skype interview was used with the hope that it would provide an avenue for the participant and this researcher to ask clarifying questions in order to either communicate a cognitive understanding of the question being asked or an expansion of the response being given by the subject. Also, the Skype interview was used because it provided an opportunity to talk to otherwise inaccessible participants, thus, breaking geographical barriers. The use of Skype gave participants themselves a greater freedom to participate in this research, without the need to travel. Moreover, the use of Skype saved the researcher from certain financial and logistical issues, as interviews were easily conducted from the comfort of one's home. This method, therefore, eliminated not only the need to travel, but also the need to find a venue for an in-person interview.

In spite of these advantages, the researcher acknowledged that using a Skype interview had its own challenges. Firstly, due to an unstable Internet connection, there was the possibility for people to be unable to participate. Secondly, there was also the

likelihood of people not having access to a computer with the necessary software that provided a Skype capability. Thirdly, there was the tendency of having participants who may be reluctant to participate because of their unwillingness to embrace technology (Skype), especially older people. Finally, there was the possibility that due to busy schedules a participant may refuse to participate in the Skype interview. For all these challenges likely to be faced, the researcher provided an electronic survey option for all who wanted to participate but, for any of the above reasons, could not participate via a Skype interview.

The use of the electronic surveys came with some advantages including the fact that data collection was relatively faster, since responses were automatically stored in a survey database. This provided for a hassle-free handling of data and a smaller possibility of data entry errors. Also, the use of electronic surveys also came with a minimal cost, unlike the traditional method where one may need to invest thousands of dollars to get questionnaires printed out. In addition, it provided participants with a good level of convenience because they could complete the questionnaire according to their own pace, chosen time, and preferences.

### **Skype Interview**

For those opting for a Skype interview, an email address was taken and an interview guide was mailed to them. A day and time for a Skype interview were then arranged. On the scheduled day of the interview, an email with a consent agreement was sent to them asking them to confirm that they agreed to be audio recorded. The

interview began by the investigator reading the consent statement again and having the participant verbally affirm their participation. The investigator then reintroduced herself. It was explained that the researcher was gathering data for her Masters' thesis and then a brief description of the topic ensued. In the description, the subject was told that the study was designed to ascertain the selected individual's assessment of the changes in the legal and penal arrangements in Ghana during the colonial era. The participant was also assured of their anonymity and, therefore, no identifiers were asked or required for the interview. After the interview was conducted and recorded, some clarifying notes on each question were taken by the researcher. The participant was then again thanked for their time and the interview was terminated.

The Skype interview was used because it provided an opportunity to talk to otherwise inaccessible participants, given the geographical barriers between Ghana and the United States. Also, the Skype interview provided an avenue for both the participant and the researcher to ask any clarifying questions about either the question being asked or the response given. Furthermore, the use of Skype saved the researcher and respondents from certain financial and logistical issues, as interviews were easily conducted from the comfort of the home setting.

### **Electronic Surveys**

For those opting to take the electronic survey, a survey guide was emailed to them. This was done so they would have an idea of what to expect in the survey and prepare adequately. The actual survey was then emailed to respondents in a separate



email with no identifiers. This ensured the anonymity of the respondents. The electronic survey had a built-in consent form that all participants had to agree to before they had access to the rest of the survey. Respondents to the electronic survey were only required to fill out the survey and submit it. Once they submitted the survey, it was filed for further analysis.

The use of the electronic surveys came with some advantages including the fact data collection was relatively faster, since responses were automatically stored in a survey database. This provided hassle-free handling of data and a smaller possibility of data collection errors. Also, its use came with minimal cost as there was no need to print out the questionnaire. Finally, it provided participants with a good level of convenience because they could answer questions at a time and place of their own choosing. One negative aspect of this approach was respondents sometimes forgot about the survey and took a long time to complete and submit it. However, all opting for this method did eventually complete the survey.

### **Validity Testing**

Before surveys were sent out or interviews were conducted, the validity of the survey questions was tested in a pilot study in order to see if respondents from the actual sample would be able to understand the wording of the questions. This was done to assess the accuracy of the research instrument and also ascertain the extent to which the research instrument measures what it is supposed to measure. As a result, friends of the investigator were asked to fill out the survey questions and, based on

how they answered the questions, it became apparent that some of the questions had to be reworded to ensure that the intended respondents would understand the question's meaning. After the pilot study was completed, the interview instrument was adjusted and the study began.

### **Working Definitions**

The survey consisted of a series of closed- and open-ended questions. The closed- ended questions dealt with the general demographic background (the complete interview instruments is in Appendix A). Demographic questions asked each subject their gender, age, the area in which they were raised, profession, and where they obtained their degree. Asking these questions enabled the investigator to ascertain the composition of the sample and analyze these variables for their influence upon other core questions in the survey.

The remaining questions were asked so that the investigator's main research objectives could be operationalized. In order to determine whether a respondent aligned with Durkheim, Weber or Foucault, the following questions were asked: (1) before Gold Coast came under the aegis of British rule, Gold Coasters were regulated by traditional laws (customary laws) with a commensurate penal system. However, this arrangement was altered during the colonial era. What accounts for the changes in the legal and penal arrangement during the colonial era? and (2) which groups of people would you say benefited the most because of the changes? and Why? These questions not only provided the investigator with their perspectives on the cause for the changes,

but also provided enough information to be able to identify if their responses agreed with either Durkheim's, Weber's or Foucault's theory.

To identify whether the justice system inherited from the colonial masters would remain or be likely to undergo some changes, the following question was asked— Should the current justice system be altered? This was designed to gather respondent's assessments of the justice system, as well as allow them to identify those areas that they think need to be altered. This question also helped to identify whether or not the respondent deemed the current system satisfactory.

To ascertain a respondent's view of what the justice system would have been without colonization, participants were asked — If there had been no colonization of Gold Coast, would the justice system be different from what is now in place? This question was designed to illicit the respondent's view regarding a system that might have evolved without colonization.

Examining the participant's recommendation for the current justice system, participants were asked— Do you think the Ghanaian legal and penal system should subscribe to a particular theory of punishment? and Why? Responses to these questions provided the investigator not only with an insight into the participant's personal views about the nature of the current system, but may give insights into how a subject might view the orientation to punishment that will be taken in the legal system in Ghana's future.

### **Procedure for Analysis of Data**

After all the data was gathered, responses were coded. Both responses (interview and electronic surveys) were coded the same way, since they both contained the same questions. With regards the question that seeks to identify the cause for the changes in the justice system, if a respondent explained that population growth in Gold Coast led to a more complex society, the respondent would be recorded as using Durkheim's theory to explain the change. If subjects explained the change as a need for standardization or efficiency, they were coded as using Weber's theory as accounting for the change. If, however, responses indicated that these changes were designed to control the indigenous people and make them conform to the British normative system, they were coded as using Foucault's theory to account for the change. The remaining questions analysed in this research were either closed-ended or short answer questions. Hence, no coding was done for these questions. The short answers were merely obtained to help provide an explanation for, or context to, the quantitative data.

After this coding process was completed, an analysis of the responses in relation to the various demographic variables was conducted. For a demographic variable be considered as having an influence upon the dependent variable, there had to be at least 20% or more variation between the attribute configurations.

### Participants Responses to Key Questions

In this section, examples of a subject's response to certain questions are presented in a table format. Each question and the examples of various subject's responses are presented in separate tables.

**Table 1**

Examples of the Sample's Responses to Question 1- What Accounts for the changes in the justice system during the colonial era?

Theoreticians	Sample Responses
Max Weber	<p>a. Customary laws were not sufficient to deal with issues in the new colonial era.</p> <p>b. Prior to the colonial era, the Gold Coast was not a homogeneous society. The region was made up of varying ethnic groupings with unique and distinct cultural beliefs and laws. The coastal region, which was first to come under the influence of the colonial regime, had numerous ethnic groupings that were distinct from each other in terms of cultural beliefs. These ethnic societies each had their own system of laws and penal codes. Whereas some had a simple system, others had complex systems which, more often than not, involved the reliance on the gods and fetishes. The English encountered this phenomenon and, subsequently, initiated a policy that would create a</p>

	<p>uniformed legal system, which would have only one standard, i.e The English Legal System, albeit with certain modifications.</p> <p>c. Ghana had become part of the British realm and it became more convenient to introduce the British justice system to make justice administration easier. The colonialists likely had reservations on whether fairness and equity were delivered by our customary laws. They possibly felt the need to introduce a common law to replace the traditional pseudo-civil law, which they probably felt had little provision for cases with more distinct facts.</p>
<p>Michel Foucault</p>	<p>a. They wanted to gain authority and protect their interest. For instance, when the British came, they realized the indigenes were engaged in polygamy and for fear of not having for themselves unmarried women to satisfy their sexual needs, they made bigamy a crime.</p> <p>b. The change was, in my view, due to the colonialists move to rule the whole Gold Coast territory as one entity. They needed to combine the segregated communities so as to achieve a uniform rulership.</p> <p>c. Essentially trade. Colonial masters needed a level playing ground. Or, better still, to be able to gain control of the</p>

	<p>natives.</p> <p>d. The change was imposed by the colonial rulers to be in tune with the colonial rules and to establish their authority. There was a lot of reliance, during pre-colonial times, on the authority of the chiefs and the colonial system wanted to diffuse and water down that authority.</p> <p>e. To enable the colonial masters to have control over the system. Prior to the Colonial master coming to Ghana, the chiefs were very powerful. As soon as the colonial masters were able to exact punishment, they were rather revered. The chiefs had lost control of the system at this time.</p>
Others	<p>a. The changes were because of a cultural assimilation of both the customary laws and the laws of the colonial masters.</p> <p>b. It was more formal, the people experimented and liked it.</p> <p>c. There have been no changes, since our constitution under Article 11 recognizes customary law. Read Debrah v. State</p> <p>d. The need to trade with the colonials</p>

*Source: Field Survey, January- March 2017*

**Table 2**

Examples of the Sample's Responses to Question 2- Were the changes necessary?

<b>Yes</b>	<ul style="list-style-type: none"> <li>a. The British needed a uniform system to administer the Gold Coast because the various ethnic groups had a different system. Further, the British lacked an understanding of the customary law system of the people and also could not legally fit into same, because they had no traditional role.</li> <li>b. The colonial masters found the system unsatisfactory. Some of the punishments for offences were inhuman and, since there was no system of precedence in meting out punishment, it was sometimes arbitrary and unfair.</li> <li>c. To enable the country to be at par with international practices.</li> </ul>
<b>No</b>	<ul style="list-style-type: none"> <li>a. It helped in the imposition of British colonial rule on the indigenes.</li> <li>b. Customary law wasn't sufficient to deal with issues in the new colonial era.</li> <li>c. It failed to take into account the ethnic and cultural diversity that existed under the Gold Coast.</li> </ul>

*Source: Field Survey, January- March 2017*



**Table 3**

Example of the Sample's Responses to Question 4- What theory of punishment characterized the precolonial era and Why?

<b>Philosophy of Punishment</b>	<b>Sample Responses</b>
<b>Retribution</b>	<ul style="list-style-type: none"> <li>a. It was meant to punish the deviant because a person who goes against the law goes against the people.</li> <li>b. Retribution gives an offender what he deserves for his crime and, as such, it upheld justice in a classical sense.</li> <li>c. To ensure compliance with the norms of the society to make their reign more peaceful.</li> <li>d. Retribution gives an offender what he deserves for his crime and, as such, it upheld justice in a classical sense.</li> </ul>
<b>Deterrence</b>	<ul style="list-style-type: none"> <li>a. It was always to prevent the occurrence of such heinous crimes committed by the indigenes.</li> <li>b. To maintain the social stability.</li> <li>c. To discourage others from trying to disregard their authority.</li> <li>d. It prevented the increase in wrongdoing and deterred possible wrongdoers.</li> </ul>

	<p>e. It was mainly utilitarian/deterrent. Forms of punishment such as banishment and other publicly embarrassing punishments were meant to deter others from engaging in those same acts.</p>
<p><b>Resolving and Restoration</b></p>	<p>a. Because the main role of the chief in settling disputes between inhabitants was to come up with a solution that will not only appease the parties, but also provide a solution that allows reconciliation between them so that they could co-habit. In this view, the punishment had to have a nature that will discourage a repeat of the offence and discourage inhabitants who may consider committing a similar offence in future</p>

*Source: Field Survey, January- March 2017*

**Table 4**

Examples of the Sample's Responses to Question 5- What theory of punishment characterized the colonial era and Why?

<b>Philosophy of Punishment</b>	<b>Sample Response</b>
<b>Retribution</b>	<p>a. Crime was considered as against the people and the state had the duty to punish the offender, on behalf of the people, for justice.</p>
<b>Deterrence</b>	<p>a. They needed to apply a philosophy in order to establish themselves. If the people were to continually disobey them, it would have been a threat to their governance.</p> <p>b. They wanted to reduce the crime rate in the country.</p> <p>c. To maintain the right to continue exploitation.</p> <p>d. To gain ultimate control over the territory and make the native submit to their will.</p> <p>e. To discourage others from trying to disregard their authority.</p> <p>f. Because these people resisted these laws at the beginning, so certain systems of punishment</p>

	<p>were put in place to deter or instill fear in people. This deterrence allowed their system gain a foot hold in Ghana.</p> <p>g. The colonial masters did not want to deal with the same offenders twice.</p> <p>h. The Colonial masters needed to establish their authority and so sought to punish people in this manner.</p> <p>i. To instill fear and respect for the white people</p>
<b>Rehabilitation</b>	a. To make offenders better to reintegrate

*Source: Field Survey, January- March 2017*

**Table 5**

Examples of the Sample's Responses to Question 6- What theory of punishment characterized the current era and Why?

<b>Philosophy of Punishment</b>	<b>Sample Response</b>
Deterrence	a. It seeks to reduce, to the barest minimum, the occurrence of crimes by serving as a deterrent to others.
Rehabilitation	a. Governments are putting in place measures to rehabilitate prisoners in prisons, to make criminals better to face the society and have a society with less criminal activities.  b. To make convicts better persons.

*Source: Field Survey, January- March 2017*

**Table 6**

Examples of the Sample's Responses to Question 7- Is the current penal system different from what existed in the colonial era?

<b>Responses</b>	<b>Sample Response</b>
<b>Yes</b>	<p>a. There have been real attempts at whittling down deterrence as a form of punishment. Rehabilitation is steadily gaining ground, provided the offence is a misdemeanor and, in some cases, second-degree felonies. There is a real shift from deterrence considering the fact that several amendments have been passed in that regard. The most popular one is the Motor Traffic and Offences Act (amended) which has toned down on some road offences and their respective punishments.</p> <p>b. Before now, some offenses were non-bailable, but now all offenses are bailable.</p> <p>c. Detentions in the colonial era were adhered to, without any effort to reorient the mindsets of persons confined. Currently, the conviction of a person does not warrant an end to their future aspirations. Systems are put in place to prepare convicts to have a right standing in the society after they are discharged. More measures are being put in place to rehabilitate prisoners.</p>

<b>No</b>	<p>a. It is not much different from the colonial era. Our current justice system is a product of what was in place during colonialism. The laws, dress code, the adversarial system are all remnants of the colonial era.</p> <p>b. After independence, the people of Ghana wholly adopted the colonial rule, <i>mutatis mutandis</i>. They ought to have reverted to the traditional rules of punishment, but failed to do so.</p> <p>c. The colonial infrastructure and most of the attendant institutions were maintained during post-colonial rule and this was just one of them.</p>
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*Source: Field Survey, January- March 2017*

**Table 7**

Examples of the Sample's Responses to Question 8 - Should the current legal and penal system be altered?

<b>Responses</b>	<b>Sample Responses</b>
<b>Yes</b>	<p>a. Because the current state is unsatisfactory. The focus of the current system is on the offender rather than on being on both the victim and the offender. The victim must be appeased and compensated and the offender must be reformed so that he can re-integrate into society as a useful citizen.</p> <p>b. It should be varied to include community service and non-custodial sentences. Because certain minor offences like stealing of a fowl, foods stuff etc. shouldn't attract a prison term, but rather, community service. More serious offences like rape murder <i>etcetera</i> should attract prison term.</p> <p>c. Custodial sentence hardens many offenders; it does not afford offenders with specialized knowledge to contribute sufficiently to nation building.</p>
<b>No</b>	<p>a. Every society gets to a point where it remoulds its affairs to suit current best practices.</p>

*Source: Field Survey, January- March 2017*



**Table 8**

Examples of the Sample's Responses to Question 9- Do you think Ghanaian legal and penal system should subscribe to a particular theory of punishment?

Response	Sample Response
Yes	
No	<p>a. There are different kinds of crimes, offenders and even circumstances under which the crime(s) occurred. One theory would not be suitable for all the various shades of crimes and offenders.</p> <p>b. The state should combine the various theories of punishment to design a theory/ policy that is relevant to its development.</p> <p>c. All the forms of punishments serve a purpose. Some offences by the nature of their abhorrence and perversity must necessarily attract the deterrence approach. Where the offence is not serious or grave, then rehabilitation can be adopted. My position is there should not be a strict and narrow approach that must always be applied.</p> <p>d. All theories of punishment should be blended to provide the perfect penal system.</p> <p>e. Different circumstances require different modes of punishments. Lumping all punishments under one theory may not serve its intended purposes and will not help growth</p>

	<p>in society.</p> <p>f. All the theories of punishment have merits and demerits; we need a hybrid.</p>
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*Source: Field Survey, January- March 2017*

**Table 9**

Examples of the Sample's Responses to Question 10- If there had been no colonization, would the justice system be different from what is in place now?

Response	Sample Response
<b>Yes</b>	<p>a. The various ethnic groups would have been using their own customary penal system. As such, there would not be a universal penal system for the whole of Ghana.</p> <p>b. The system where the chiefs and traditional rulers adjudicated matters would be the only system of adjudication practiced and, also, forms of mediation and negotiation by the elderly in the society would be in place.</p> <p>c. Mainly because before colonialism there did not exist the unified nation Ghana. There were different states with different sets of customary law including the penal system. Without colonialism leading to the unified nation, the current Ghanaian justice system would not have been in place.</p> <p>d. There would have been no Ghana to start with. It would have been independent ethnic states with their different</p>

legal and justice systems. The standardization of the legal system by the colonists was part of the nucleus of what we now call Ghana.

e.

f. The legal profession is not aboriginal, the way we dress to court. No formal courts- colonization came with its own procedures in court, like admitting evidence, comes with some technicalities- (Bureaucracy), when to file a writ, when to file for appeal procedure is as important as substantive laws. If there would have been no colonization, cases would have been discharged in a short while. If there had been no colonization, it would have been better, as bureaucracy has led to prolonged trials.

g. The pre-colonial justice delivery system status quo would have been maintained. It would have taken into account the ethnic differences in all the states that formed the Gold Coast. The penal system would have directly reflected the value system of each group and not have imposed Western beliefs and culture.

h. Common law would not have been part of the laws of Ghana, thus rendering the judicial system different.

	<p>i. Ghanaians would have stuck to their customary law and every society, within the country, would have had different laws and regulations.</p>
<b>No</b>	<p>a. It was a Man's world before colonialism. It was unheard of for a female to triumph over her husband in such a system over an issue that affects them both.</p> <p>b. All these theories were in existence, they were just not coded.</p>

*Source: Field Survey, January- March 2017*

### **Summary**

Chapter three was designed to provide an overview of the various methodological areas involved in the study. The chapter focused on explaining the nature of the study, the sampling selection process, data collection method, working definitions and the procedure for analysis of data, and examples of subjects response to key questions. In the ensuing chapter, the analysis of the data will be undertaken.

## **Chapter Four**

### **Analysis**

The purpose of this chapter is to examine and analyze the data collected in this study. First, a description of the sample with regards to the focus of the investigation is presented. Second, demographic variables and their relationship to several key variables is examined. Finally, a discussion of the research findings is conducted.

### **The Sample**

In terms of the sample's explanations for the changes occurring in the justice system, eight subjects (33%) explained the change in the judicial system from Weber's perspective and 16 (67%) were coded as reflecting Foucault's orientation. None of the subjects was found to use Durkheim's theoretical perspective to explain the change. Six subjects who did not align with any theory were determined as "Others" and they were omitted from parts of the analysis. When subjects were asked, Which groups of people benefited from the change? 24 (86%) subjects indicated that it benefited the Colonist with only four (14%) subjects arguing that the change favored indigenes. Two subjects fell within the "Others" category and were omitted from parts of the analysis. Further, it was noted that all those who said the change benefited the Colonist used Foucault's theory and all those who said it benefited Gold Coasters applied Weber's theory.

In terms of today's justice system being similar or different from what existed in the colonial era, 16 (57%) subjects indicated that there was no difference. They stated

the adversarial system with court proceedings, the infrastructure, and the dress code for legal practitioners have remained same as those in effect during the British rule. Twelve respondents (43%) contended that the current justice system is different from what existed in the colonial era. For instance, in a landmark ruling, the Supreme Court by a 5-2 Majority decision struck down Section 96(7) of Act 30 declaring the law on non-bailable offences unconstitutional (myjoyonline, 2016). This means that persons accused of crimes such as murder, rape and narcotics can henceforth be granted bail, striking down a nearly 60-year-old law. Another example of the change cited was the fact that marital rape is now a criminal offense in Ghana. In Ghana, before 2007, the Criminal Code, 1960 (Act 29) at section 42(g) exempted female spouses from revoking Consent. This provision meant that husbands could not be held criminally liable for raping their wives as their wives having perpetually consented to sex while married. In 2007, the marital exemption was declared unconstitutional through a statute revision and a Domestic Violence law was passed. These changes make it now possible for husbands to be prosecuted for marital rape, should they proceed to have sex with their wives without their wives' consent (Archampong, 2010). Two respondents provided no response to this question and, thus, were excluded from the analysis. The data indicates that, in our sample, respondents thought the current justice system has both similarities and differences when compared to the colonial era.

Examining subjects' views regarding whether or not the justice system should be altered, the distribution of responses showed that 20 (71%) respondents wanted the current justice system to be altered and eight (29%) subjects wanted it to be



maintained. Two respondents provided no response, hence, they were eliminated from the analysis. Drawing from the distribution, it appears the majority of the subjects in our sample want the current system to be altered. These respondents stated that non-custodial sentencing and community service should be incorporated into the sentencing options for minor crime and grave offenses, amounting to custodial sentencing, should be premised on the rehabilitative theory of punishment. Based on the subjects' responses, it is evident that the justice system inherited from the British should undergo some changes.

When the sample was asked whether the justice system would have been different if there had been no colonization, it was revealed that 24 (83%) subjects stated that the justice system would have been different. They noted that chiefs would have continued to be the legal authority over the various ethnic groups and continued to exact punishment. Additionally, there would not have been a legal profession as the traditional courts were not structured to make use of lawyers and judges. The remaining five (17%) respondents, noted that the justice system of Ghana would have been no different without colonization. They focused their explanations on the fact that theories of punishment in application now were in operation before colonization. They stated that indigenes at the time were not educated and, hence, did not document how they applied the various theories of punishment in their judicial decisions. However, they believed them to be similar to today's punishments theories. Based on the distribution of the sample responses, it would be fair to conclude that, over all, Ghana's justice system would have been different if there had been no colonization.

When subjects were asked, Should the penal system of Ghana subscribe to a particular theory of punishment? It was also revealed that 24 (80%) respondents indicated that the Ghanaian justice system should not subscribe to a particular theory of punishment. Rather, the system should apply all theories as required at a given time and should consider the unique circumstances of each case when sentencing the offender. Six (20%) noted that the justice system should subscribe to a specific theory of punishment. Given the sample's distribution, it appears most of the subjects recommended that the justice system of Ghana should not subscribe to a particular theory of punishment.

## Findings

Certain demographic variables were examined to gain an insight as to what may be influencing the answers subjects gave to certain questions. These variables, gender, regions where respondents were raised, and a subject's profession were analyzed to see if they influenced the subject's: (1) Selection of the theory to explain the change; (2) Believing the justice system inherited from the colonial masters should remain in place; (3) View on how different the Ghanaian justice would have been without colonization; and (4) Recommendations for the current justice system.

**Gender:** To ascertain, the influence of gender upon the subjects' response to the above questions, several tables were constructed. First, a respondent's gender was examined in relation to the question- What accounts for the changes in the legal and penal arrangement during the colonial era?

As Table 10 illustrates, four (25%) of the male subjects and four (50%) of the female respondents explained the change in the legal and penal arrangement during the colonial era using ideas contained in Max Weber's theory (to ensure efficiency, predictability and calculability). On the other hand, twelve male subjects (75%) and four female subjects (50%) responded with statements that reflected in Michel Foucault's theory of social control and domination. Thus, based on the distribution, male subjects are more likely than female subjects, to explain the change in the legal and penal arrangement with statements consistent with the Foucauldian theory. Female respondents, on the other hand, are likely to explain the change using both Weber and

Foucault's theories, four (50%) and four (50%) respectively.

**Table 10**

Gender and the Theory Used to Explain the Changes in the Justice System During the Colonial Era

<b>Theoretician</b>	<b>Male</b>	<b>Female</b>
<b>Max Weber</b>	4 (25%)	4 (50%)
<b>Michel Foucault</b>	12 (75%)	4 (50%)
<b>Total*</b>	16 (100%)	8 (100%)

*Source: Field Survey, January- March 2017*

*\*Respondents in this table do not total 30 because 6 subjects responding "others" were omitted from the analyses.*

Regarding the question -Which group of people benefited from this change? there was a total of 30 respondents who answered this question. There were 21 males and nine females. However only 19 males were used in this analysis as of two male respondents fell within the "Other" category, and were omitted from the analysis. As evident in Table 11, 15 male respondents (79%) indicated that it was the Colonist who benefited and all 9 female respondents (100%) noted same. The remaining 4 male respondents (21%) indicated that it was indigenes who benefited. Given the distribution presented, it appears that the majority of both females and males were likely argue that the change inured solely to the benefit of the British, but some males did think the indigenes benefited.

**Table 11**

Gender and the Response Given to the Question - Which groups of people benefited from the changes in the justice system during the colonial era?

<b>Groups of People</b>		<b>Male</b>	<b>Female</b>
<b>Colonist</b>		15 (79%)	9 (100%)
<b>Indigenes</b>		4 (21%)	0 (0)
<b>Total*</b>		19 (100%)	9 100%

*Source: Field Survey, January- March 2017*

*\*Respondents in this table do not total 30 because 2 subjects responding "others" were omitted from the analyses.*

In relation to the question – Should the current legal and penal system be altered? there was a total of 28 respondents composed of 19 males and nine females that responded to this question. Evidenced in Table 12, 16 male respondents (80%) and five female respondents (56%), responded that the current system should be altered. For those who wanted the current system to remain as it is, three (14%) were males and four (44%) were females. Data revealed that majority of both males (80%) and females (56%) believed the current justice system should be altered, but male subjects appear more likely than females to say that the current justice system should be altered.



**Table 12**

Gender and the Response Given to the Question - Should the current legal and penal system be altered?

<b>Responses</b>	<b>Male</b>	<b>Female</b>
<b>Yes</b>	16 (80%)	5 (56%)
<b>No</b>	3 (15%)	4 (44%)
<b>Total*</b>	19 (100%)	9 (100%)

*Source: Field Survey, January- March 2017*

*\*Respondents in this table do not total 30 because 2 subjects provided no response hence, were omitted from the analyses.*

In relation to the question - If there had been no colonization of Gold Coast, would the justice system be different from what is now in place? Table 13 reveals that if there had been no colonization 15 (75%) males and 9 (100%) females believed that the justice system would have been different. Five (25%) male respondents did note that the justice system would not have been different. Thus, both females and males noted that the current justice system would have been different, but all females agree that it would have been different if there had been no colonization.

**Table 13**

Gender and the Response Given to the Question - If there had been no colonization of Gold coast, would the justice system be different from what is now in place?

<b>Responses</b>	<b>Male</b>	<b>Female</b>
<b>Yes</b>	15 (75%)	9 (100%)
<b>No</b>	5 (25%)	-
<b>Total*</b>	20 (100%)	9 (100%)

*\*The total number does not sum up to 30 because 1 respondent did not respond to the question.*

With regards to the question- Do you think the Ghanaian legal and penal system should subscribe to a particular theory of punishment? Table 14 revealed that 19 (95%) male subjects and 5 (56%) female subjects noted the penal system should not subscribe to a particular theory of punishment. One (5%) male respondent and 4 (44%) females indicated that it should subscribe to a particular theory of punishment. Thus, in terms of a recommendation for the current justice system, both males and females recommend that the Ghanaian justice system should not subscribe to a particular theory of punishment, but an overwhelming percentage of males responded this way.

**Table 14**

Gender and the Response Given to the Question - Should Ghanaian legal and penal system should subscribe to a particular theory of punishment?

<b>Responses</b>	<b>Male</b>	<b>Female</b>
<b>Yes</b>	1 (5%)	4 (44%)
<b>No</b>	19 (95%)	5 (56%)
<b>Total*</b>	20 (100%)	9 (100%)

*\*The total number does not sum up to 30 because 1 respondent did not respond to the question.*

**Region:** The geographic location, in which respondents were raised, was examined in relation to same variables that were examined in the previous section. As illustrated in Table D in Appendix B, respondents in our sample were distributed among the several regions in Ghana. However, for purpose of analysis, the geographic locations were configured into two groups: (1) coastal and (2) interior groups. The coastal group was comprised of all ethnic groups on the coastal lanes of Gold Coast. These groups were the first to align themselves willingly to the British and thus were not hostile to the British rule. The interior group is comprised of all ethnic groups in the other areas who were hostile to British rule and did not willingly submit to the British rule. The Coastal group, therefore included Central, Greater Accra, and the Western Regions. The interior group would include the Ashanti, Brong Ahafo, Upper East, Upper West and Northern Regions. There were nine respondents from the coastal regions and twelve from the interior. The remaining sample subjects indicated they were either from Ghana, without any reference to a specific region, or listed being raised in several regions. These respondents were not examined in this analysis.

Table 15 reveals that none of the respondents from the coastal regions used ideas in Weber's theory to explain the change in the legal and penal system of Gold Coast. However, five subjects (42%) from the interior region explained the change with statements reflecting Weber's theory. Nine (100%) of respondents from the coastal region and seven subjects (58%) from the interior region viewed the change from Foucault's perspective. Thus, given the sample distribution, respondents who were raised in either region are more likely to explain the change in the legal and penal

arrangement during the colonial era from Foucauldian point of view. However, the coastal group was unanimous in their emphasizing ideas reflecting Foucault.

**Table 15**

Region in Which a Respondent was Raised and the Theory Used to Explain the Change  
in the Justice System During the Colonial Era.

<b>Responses</b>	<b>Coastal Regions</b>	<b>Interior Regions</b>
<b>Max Weber</b>	-	5 (42) *
<b>Michel Foucault</b>	9 (100%)	7 (58%)
<b>Total*</b>	9 (100%)	12 (100%)

*Source: Field Survey, January- March 2017*

*\*The total number of respondents do not total 30 because 9 respondents did not specify which region they were raised in, and were omitted from the analysis.*



With regards to the question - Should the current legal and penal system be altered? Table 16 reveals that five (83%) respondents from the Coast and six (54%) subjects from the interior responded that the current justice system should be altered. One (17%) respondent from the coast and five (45%) subjects from the interior responded that the justice system should remain as it is now. Based on this distribution respondents from both the coast and interior are favor of changes in the current justice system. However, more from the coastal region are in favor of it being changed. Per the response, respondents from the coast, are more likely than those from the interior to indicate that the justice system inherited from the British should not stay in place.

**Table 16**

Region in Which a Respondent was Raised and the Response Given to the Question -  
Should the current legal and penal system be altered?

<b>Responses</b>	<b>Coastal Regions</b>	<b>Interior Regions</b>
<b>Yes</b>	5 (83%)	6 (54%)
<b>No</b>	1 (17%)	5 (45%)
<b>Total*</b>	6 (100%)	11 (99%)**

*Source: Field Survey, January- March 2017*

*\*There is a reduction in the number of respondents because some respondents provided no response to this question and some did not indicate which region they were raised. \*\*The total of respondents for the interior region does not sum up to 100 due to rounding error.*

In relation to the question - If there had been no colonization of Gold Coast, would the justice system be different from what is now in place? Table 17 shows that eight (81%) subjects from the coast and 10 (83%) subjects from the interior noted that the justice system would have been different. Two (18%) from the coast and two (17%) for the interior region indicated that there would have been no changes. Clearly, based on this distribution, it appears subjects from both the coast and interior thought that the justice system of Ghana would have been different without colonization.

**Table 17**

Region in Which a Respondent was Raised and the Response Given to the Question - If there had been no colonization of Gold coast, would the justice system be different from what is now in place?

<b>Responses</b>	<b>Coastal Regions</b>	<b>Interior Regions</b>
<b>Yes</b>	9 (81%)	10 (83%)
<b>No</b>	2 (18%)	2 (17%)
<b>Total*</b>	11 (100%)	12 (99%)**

*Source: Field Survey, January- March 2017*

*\*There is a reduction in the number of respondents because some respondents provided no response to this question and some did not indicate which region they were raised.*

*\*\*The total of respondents for the interior region does not sum up to 100 due to rounding error.*

With regards to the question- Do you think the Ghanaian legal and penal system should subscribe to a particular theory of punishment? Table 18 shows that nine (81%) of respondents from the coast and eight (67%) from the interior noted that the Ghanaian penal system should not subscribe a particular theory of punishment. Two (18%) subjects from the coast and four (33%) from the interior indicated that it should subscribe to a particular theory of punishment. Thus, with regards to Ghanaian justice system subscribing to a particular theory of punishment, subjects from both the coastal and the interior noted that the penal system should not subscribe to a particular theory of punishment, with the coastal group more likely to answer in this way.

**Table 18**

Region in Which a Respondent was Raised and the Response Given to the Question -  
Should Ghanaian legal and penal system subscribe to a particular theory of  
punishment?

<b>Responses</b>	<b>Coastal Regions</b>	<b>Interior Regions</b>
<b>Yes</b>	2 (18%)	4 (33%)
<b>No</b>	9 (81%)	8 (67%)
<b>Total*</b>	11 (99%)**	12 (100%)

*Source: Field Survey, January- March 2017*

*\*There is a reduction in the number of respondents because some respondents provided no response to this question and some did not indicate which region they were raised.*

*\*\* The total of respondents for the interior region does not sum up to 100 due to rounding error.*



**Profession:** Respondents were separated into two groups based on their profession. One group was composed of lawyers and judges and the other comprised of law students and historians. The first group was referred to as professionals and the second as academicians. When this sample was asked, what accounts for the changes in the legal and penal arrangement during the colonial era? data captured in Table 19 indicates, 12 (80%) subjects who were professionals and four (44%) subjects who were academicians responded with ideas that reflected Foucault's theory as an explanation for the changes. Three (20%) professionals and five (55%) academicians explained the changes in the light of Weber's theory. Thus, based on the distribution, professionals are much more likely than academicians to use ideas reflecting Foucault's theory to explain the change. Conversely, academicians are likely to explain the change using statements more aligned with Weber's theory.

**Table 19**

Profession of Respondent and the Theory Used to Explain the Change in the Justice System During the Colonial Era.

<b>Responses</b>	<b>Professionals</b>	<b>Academicians</b>
<b>Max Weber</b>	3 (20%)	5 (55%)
<b>Michel Foucault</b>	12 (80%)	4 (44 %)
<b>Total*</b>	15 (100%)	9 (99%)**

*Source: Field Survey, January- March 2017*

*\*The total number of respondents do not total 30 because six respondents fell into the other category. Hence, were eliminated from this analysis.*

*\*\*The total of respondents for the interior region does not sum up to 100 due to rounding error.*

With regards to the question, should the current justice system be altered? Table 20 reveals that 12 (80%) professionals and two (22%) academicians noted that the current justice system should be altered. Three (20%) professionals and six (66%) academicians noted that the current justice system should not be altered. Given this distribution, it appears that professionals are much more likely than academicians to respond that the justice system should be altered and the system inherited from the British should not stay in place.

**Table 20**

Profession of Respondent and the Response Given to the Question - Should the current legal and penal system be altered?

<b>Responses</b>	<b>Professionals</b>	<b>Academicians</b>
<b>Yes</b>	12	2 (22 %)
<b>No</b>	3 (20%)	6 (66%)
<b>Total*</b>	15 (100%)	9 (99%)**

*Source: Field Survey, January- March 2017*

*\*The total number of respondents do not total 30 because 6 respondents fell into the other category. Hence, were eliminated from this analysis.*

*\*\*The total of respondents for the interior region does not sum up to 100 due to rounding error.*

In relation to the question, if there had been no colonization of Gold Coast, would the justice system be different from what is now in place? Table 21 reveals that 12 (80%) professionals and eight (89%) academicians thought that the justice system would have been different if there had been no colonization. Three (20%) professionals and one (11%) academicians indicated that the justice system would not have been different. Thus, based on these responses, the overwhelming majority of both professionals and academicians thought that the current justice system would have been different had there been no colonization.

**Table 21**

Profession of Respondent and the Response Given to the Question, if there had been no colonization, would the current justice system be different from what is now in place?

<b>Responses</b>	<b>Professionals</b>	<b>Academicians</b>
<b>Yes</b>	12 (80%)	8 (89 %)
<b>No</b>	3 (20%)	1 (11%)
<b>Total*</b>	15 (100%)	9 (100%)

*Source: Field Survey, January- March 2017*

*\*The total number of respondents do not total 30 because 6 respondents fell into the other category. Hence, were eliminated from this analysis.*

With regards to the question, do you think the Ghanaian legal and penal system should subscribe to a particular theory of punishment? Table 22 reveals that 15 (100%) professionals and nine (100%) academicians noted that the Ghanaian justice system should not subscribe to a particular theory of punishment. Given this response, it is evident that both professionals and academicians recommend that the justice system should not subscribe to a particular theory of punishment.

**Table 22**

Profession of Respondent and the Response Given to the Question, Should the Ghanaian legal and penal system subscribe to a particular theory of punishment?

<b>Responses</b>	<b>Professionals</b>	<b>Academicians</b>
<b>Yes</b>	-	-
<b>No</b>	15 (100%)	9 (100%)
<b>Total*</b>	15 (100%)	9 (100%)

*Source: Field Survey, January- March 2017*

*\*The total number of respondents do not total 30 because 6 respondents fell into the other category. Hence, were eliminated from this analysis.*



## Discussion

**General Findings:** The majority of the respondents explained the change in the justice system during colonial era using Michel Foucault's theory of social control. That is, the colonial masters changed the justice system in order to control the indigenes, as well as shape their souls to become the type of subjects they needed in order to implement their colonial agenda. With the majority of respondents explaining the change in justice system during the colonial era as reflective of Michel Foucault's theory, one might expect that the Ghanaian justice system would have been altered after the country gained independence. However, when respondents were asked if the current justice system was different from what existed in the colonial era, a majority of the subjects indicated that it was the same. The question then is Why has it been maintained if it was put in place to exploit and control indigenous population. This situation could be explained by one of these several reasons: (1) the effects of bureaucracy; (2) the system benefited the new rulers; (3) re-socialization; or (4) internalized oppression.

As alluded to in chapter two, British rule was premised on a bureaucratic administration. One characteristic of bureaucratic administration is that it is designed to persist regardless of whose interest it serves or what policies it is required to implement. So, even though British rule has ended, the bureaucratic structures and the people whom it served continued and survived the changes. Given this, it could be that the justice system established by the British has continued to exist because of the

characteristic of bureaucratic administration: Its ability to persist regardless of whose interest it serves. This idea is captured by Raymond Atuguba in his work, "Ghana @ Fifty: Colonized and Happy". He noted that in Ghana, as in the case of most ex-colonies, the upper middle class and upper class stepped directly into the shoes of the colonial masters. Needing to fit into the British structures, they have in the past 50 years ordered their lives per the remnants of the colonial legislation available. Because, colonialism instituted a racist order of things that provides no incentives for neo-patrician group to change them. Thus, the upper middle classes and the upper classes rabidly defended the status quo (Atuguba & Mensah-Bonsu, 2007).

Given that the bureaucratic administrations that served the British continued to existed, even after colonization, it may well be the case that the indigenous group that took over from the British may have also enjoyed the privileges enjoyed by the British under the exploitative justice system. Given these benefits derived from the British structures, indigenes who came to be in power may not have changed it because they benefited from it. For instance, one respondent delineated how the government or public officials, as compared to the layman, benefit from the current system. They said:

There are some offenses that protect the bourgeoisie, offenses like corruption by the public officer, corruption by a juror, causing financial loss to the state, these offenses are likely to be committed by top officials in government, very aristocratic persons. But the punishment for these offenses is minimal. But when it comes to stealing for the layman trust me the punishment for stealing is way above that of causing financial loss to the state, meanwhile corruption of a public officer is also stealing but stealing in another way (Remember these laws were received from the British- in England these laws were put up to protect a certain class, thus the same idea was applied here). Someone can cause financial loss to the state, amount worth 50million Ghana cedis and the punishment meted out to him is lower than the lay person stealing another person's item". With

this kind of system where the lawmakers, the aristocrats and public officers are protected by the existing statutes, the incentive to change them may not be attractive.

It may also be that the emergence of the bureaucracy led to a division of labor and specialization. This may have led to the break in family and social bonds. As a result, the colonial institution may have replaced the family institution to re-socialize Gold Coasters to accept the bureaucratic structures. It could well be that the indigenous rulers who took over from the British, now considered these structures to be efficient and functional for society, hence, they maintained them.

The maintenance of the colonial justice system to date may also have been the result of internalized oppression. The colonial masters, in order to justify the changes and the nature of punishment they introduced under colonial rule, labelled Africans as brutal and savage, while, at the same time, saw them as simple and childlike and not capable of managing their own affairs. Thus, the ideology of racist paternalism was incorporated into the social fabric. Having been socialized to appreciate the colonial structures, it may be the case that the indigenous group that took over, were also socialized to internalize this stereotype: that the African is childlike and unable to manage their own affairs. Consequently, they may have thought that they would be better off under the colonial structures since they may not be capable of handling or dealing with their own issues in a different system.

In regards to ascertaining whether the colonial era justice system will remain, it was discovered that there was a possibility of it undergoing some changes as the majority of the respondents noted that the current justice system should be altered.

Some of the alterations suggested that the justice system should also focus on the victim, in the sense that the victims should be compensated for their losses.

Respondents also noted that punishment should be varied to include non-custodial, community service and custodial sentences for grave offenses. However, in the case of custodial sentencing, the punishment should be largely premised on rehabilitation.

Respondents stated that this would have the effect of relieving the government of the financial burden that comes with incarcerating prisoners for an extended period of time. Additionally, by treating offenders (rehabilitation), recidivism would be curbed and offenders can reintegrate into society.

Drawing from the responses given by the subjects, it was evident that Ghana's justice system would have been different if there had been no colonization. Subjects stated that the chiefs would have continued to be the legal authority over the various ethnic groups and continued to exact punishment. Additionally, there would not have been a legal profession, since the traditional courts were not structured to make use of lawyers and judges. Respondents also noted that not only would the justice system be different but also the geographical boundaries of what is now Ghana would have been different. As the current geographical boundaries of Ghana were mapped out by the British to demarcate the boundaries of the colonial jurisdiction, there is the possibility that there would have been no country by name Ghana existing today.

With regards to respondent's recommendations about punishment theories, respondents recommended that the penal system should not subscribe to a particular theory of punishment. Rather, it should incorporate the various theories of punishment-

retribution, deterrence and rehabilitation. This way, the unique characteristics and dynamics of each case would be considered. Again, this recommendation draws our attention to the fact that, before the arrival of the British, punishment during the precolonial era ranged from fines to apologies to animal sacrifices. Thus, each case was treated based on its own characteristics. It was when the British took over that the penal system became solely premised on deterrence, with uniform punishments and the introduction of imprisonment. The respondents' recommendation to have a justice system which will incorporate all three theories of punishment, during the sentencing phase, seems to indicate a call from our respondent's to return to the underlying features of the traditional justice system.

The findings revealed that the deterrent theory of punishment was prevalent in the three historical periods examined, precolonial, colonial and postcolonial eras. However, the reason why it was applied differed from one era to the other. In the precolonial era, while punishment was applied to an offender, the overall stability and harmony of the community were the focus. Under British rule, and in today's system, it seems to be more concerned with controlling the offender and less regards for the overall harmony of the larger community.

**Gender Based Analysis:** When the variable Gender was examined in relation to selected variables, several outcomes were found to be interesting. These outcomes were in relation to the questions, What accounts for the changes in the legal and penal arrangement during the colonial era? Should the current justice be altered? and Would the justice system would have been different if there had been no colonization?

When asked, what accounts for the changes in the legal and penal arrangement during the colonial era? the findings revealed that males were more likely to explain the change in the legal and penal arrangement during the colonial era using the Foucauldian theory. Female respondents, on the other hand, incorporated both Weber and Foucault's theories but were slightly skewed towards Weber's theory.

In attempting to understand why more male respondents may have explained the change from the Foucauldian perspective, the patriarchal system of Ghanaian society may provide insights. Males have been socialized to always be independent, that is, to be in charge of their own lives. Thus, the presence of another entity to be in charge over their lives would be interpreted as an attempt to control them, which would be in line with Foucault's theory of social control. Females, on the other hand, are socialized to be submissive and dependent. Meaning they are more likely to submit to authority and accept whoever is in charge. Females are also socialized to believe that, the authority figure would make certain decisions that were in their best interest. Thus, female respondents are likely to perceive the change in the justice system under colonial rule as a change which furthered their interest. Females may have viewed the change as representing a shift from an arbitrary justice system to a predictable and efficient justice system. Hence, their alignment to the Weberian theory.

In relation to the question about whether or not the current justice should be altered, males more than females indicated that the justice system should be altered. Females may not have wanted to see the justice system to be altered because the changes in the justice system under colonial rule brought about some level of fairness

for them. In the sense that, in the precolonial era, females were most likely to lose any case where the litigating party was a male, as the overall social system was patriarchal. With the changes that occurred under colonial rule, both males and females were placed on the same footing in the eyes of the law. Thus, one won or lost a case based on the substance of the case or evidence and not one's gender. As the current justice system was inherited from the British, it could be assumed that it is still providing this fairness to female litigants. Hence, their unwillingness to see this altered. It may also be the fact that the family does not socialize females to take risks. Thus, since they not sure what the outcome would be like should the current system be altered, they may not be in favor of it being altered.

With regards to the question that sought to find out whether the justice system would have been different if there had been no colonization, it appeared that females more than males thought it would have been different. Again, female respondents may have explained it in the sense that the patriarchal system, that gave men an edge in litigation, would have still prevailed. Conversely, males may have explained the justice system as being different in the sense that males may have continued to enjoy the patriarchal privileges under the traditional justice system.

Based on the responses, it seemed that the variable Gender had an influence on subject's responses. It is believed that the patriarchal system in Ghana, having had an effect on a male's and female's orientation to their world, would influence their responses to the questions.

**Region Based Analysis:** When I examined the variable Region in relation to selected variables, several outcomes were found to be interesting, but not related in a way they were predicted. These outcomes were in relation to the questions, What accounts for the changes in the legal and penal arrangement during the colonial era? Should the current justice be altered?

When respondents were asked, what accounts for the changes in the legal and penal arrangement during the colonial era? the sample distribution showed that respondents who were raised on the coast are more likely than those from the interior regions to explain the change from Foucauldian point of view. Subjects from the interior are more likely to view the change in the light of Weber's theory. This was a very interesting development. One would have expected that people from the interior regions, who did not submit to the authority of the British willingly, would classify the change in terms of Foucault. Those from the Coast, who were more accepting and less resistant to the British rule, would be more likely to use Weber's theory to explain the change. This outcome may be explained by our sampling technique. It may well be that our sample, given the small number of subjects and lack of randomness, did not capture the differences between the two regions. A larger random sample may have done so.

With regards to the question, Should the current justice system should be altered? the distribution showed that coastal dwellers were more likely than interior dwellers to advocate for a change in the current justice system in Ghana. Again, one would expect that the interior dwellers more than the coastal dwellers would opt to



have an oppressive system be altered, but this was not the case. Again, this may be a result of our sampling technique.

Given these responses, one could conclude that the geographic location where respondents were raised did have an influence on how they answered, but not in the way expected. It may well be that the sampling technique used may not have captured the regional differences. It may also be that Ghanaians today, since they are far removed from the period of colonization, the historical effects on the interior population has diminished.

**Profession Based Analysis:** When I examined the variable Profession in relation to selected variables, several outcomes were found to be of interest. These outcomes were in relation to the questions, What accounts for the changes in the legal and penal arrangement during the colonial era? and Should the current justice should be altered?

When respondents were asked, what accounts for the changes in the legal and penal arrangement during the colonial era? professionals more than academicians explained the change using ideas of Foucault's theory. On the other hand, academicians explained the change using ideas reflective of Weber's theory. Here again, one might have expected the academicians to explain this change using Foucault's theory, since they may have, because of their studies, been more aware of the British imposing their system upon Ghana. However, if one moves past that argument, one may say that the academicians might be more aware of the efficiencies gained in the bureaucratic approaches of the British system. They, therefore, may have seen the change as being

more the result of imposing a bureaucracy on the traditional system for efficiency as opposed to viewing it from a social control perspective. Professionals, having worked in the system may know full well the power of the state. They, therefore, may be more likely to focus on social control than would the academicians.

In relation to finding out whether the current justice system should be altered, professionals more than academicians indicated that the current justice system should be altered. Again, drawing from the explanation provided above, a professional's experience of working in the system may have placed them in a better position to assess the justice system, thus conclude that it must be altered.

Drawing from the responses provided, it could be concluded that the profession of subjects did appear to influence a subject's response to questions. The key to the variation may well be that the professionals and the academicians view the question with different degrees of experience in, and the familiarity with, the justice system. Thus, their unique perspectives may have influenced their response to these questions.

### **Summary**

This chapter investigated the general characteristics of the sample. Next, these general characteristics were compared with the responses provided to the research questions, under investigation. Finally, a discussion of the findings ensued.

## **Chapter Five**

### **Conclusions and Implications**

This chapter is designed to draw conclusions about the findings of the study and state the implications for further research.

#### **Conclusions**

Most research on the justice system of Ghana has only focused on narrating the historical changes that took place during the colonial era. Many researchers, if asked, "What accounts for the changes in the justice system?" would say, "It changed so that the British would gain control over indigenes". However, none of these researchers supported this by interviewing a sample of Ghanaian individuals who had knowledge about Ghana's justice system. For instance, Sandra Joireman, in her work "Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy" (2001) only noted that effective colonization in Africa (including the Gold Coast) demanded a legal system to both maintain control of a country and resolve disputes within it. She did not further support this stance by interviewing a sample of Ghanaian individuals who had knowledge about Ghana's justice system. This research did interview subjects and analyzed their responses in a theoretical context. The theories used to analyze responses were Emile Durkheim's Social Change, Max Weber's Rationality and Michel Foucault's Social Control.

Emile Durkheim's theory of social change would explain the change in the Ghanaian justice system as an inevitable linear progression/change. That is, as the precolonial society transitioned from the traditional to modern society, interactions become complex due to an increase in the population. Given that the traditional norms and laws were unable to regulate these complex relationships associated with modernity, the justice system would have to be altered to one that could deal with these complexities (Durkheim, 1897/1951).

Max Weber's theory would explain the change in the justice system as an effect of rationality. In Weber's view, the justice system would have to become more methodological, efficient and predictable. Weber argues that when society transitions from a traditional to a modern society, traditions and affective ways of doing things are replaced by a system of bureaucratic organization based upon a hierarchy of authority and a rational objective approach to dealing with specific issues. That is, there is an introduction of a methodological style of life where modern society becomes increasingly concerned with efficiency, predictability, calculability and dehumanization (Sutton, 2000).

Michel Foucault's theory would explain the change as an attempt to control indigenes. The British altered the justice system in order to shape the souls of the people into being the type of citizen required to fulfill the demands of the political economy and government policies. Thus, a system of Governmentality was applied to ensure social control (Curtis, 2002).

After the sample's responses to the questions were coded, based on the above

theories, the analysis revealed that majority of respondents explained the change in the legal and penal arrangement in the colonial era in the light of Foucault's theory. Weber's theory accounted for the responses of the remainder of the subjects and none of the subjects suggested an explanation that was reflective of Durkheim's theory.

As alluded to in chapter four, in terms of the application of punishment during the three eras, precolonial, colonial and postcolonial, it was revealed most subjects thought the deterrent theory of punishment was present in each of the eras. However, the reason for its application differed from one era to the other. In the precolonial era, deterrence was used to deter individuals from engaging in activities that would tend to disturb the stability of society. Subjects implied social harmony was the focus while deterring an offender from their negative behavior. In the colonial era, the British used deterrence to deter indigenes from disobeying their authority and establish the British as the governmental power. There was no concern with establishing social harmony in the society. In this current era, deterrence is used to reduce, to the barest minimum, the occurrence of crimes. However, many respondents stated that rehabilitation and reintegrating the offender into the society should be the focus of the justice system.

With regards to the objective of ascertaining whether the colonial justice system, which was inherited from the British, should remain in place, the majority of subjects wanted it to be altered. Respondents noted that punishment should be varied so as to range from non-custodial to community service to custodial sentences for grave offenses. They also indicated that the law and its punishment of offenders should make provisions for the victim. Their view was that there should be restorative justice infused

into the system so that victims would be compensated by their offenders. Further, in terms of grave offense, a custodial sentence, which is to be largely premised on rehabilitation of the offender, should be applied. This will ensure a smooth reintegration of the offender into the society.

The nature of changes requested by respondents is reflective of the type of justice system that existed in the precolonial era, one that emphasized restoration, accountability and reconciliation principles. The fact that the sample alluded to these principles in their responses draws attention to the fact that the traditional justice system contained some excellent principles that the modern Ghanaian system could learn from. Ghanaians, by responding in this way to both offenders and victims, are being asked to return to their roots. This changes requested by respondents may be a call for Ghanaians to carve out a justice system that is reflective and a corollary to their history, customs and earlier social arrangements. In other words, the Ghanaian justice system should be formulated considering the: (1) history of Ghanaians — where society is now and what it once was; (2) biography of Ghanaians — the individual characteristics, traditions and the kinds of people who have inhabited Ghana; and (3) Ghanaian social structure — how the various institutional orders in Ghana function, which ones are dominant, how they are kept together, and how they might be changing (Mills, 1959). When the above perspectives are taken, an efficient justice system would emerge. This new justice system would have the effect of enabling Ghanaians to effectively deal with the social problem of crime in a way the current justice system does not. In this new system, unique traditions, social needs, social structure and social

values of Ghanaians would be incorporated into this system and establish a more humane system focusing on social harmony. It will give credence to Edward Blyden's statement when he said the soul of every race finds expression in its [traditional] institutions and that no people can profit by or be helped under institutions which are not the outcome of their own character.

The above discussion takes on more relevance when the subjects in our study responded to the question, how different the Ghanaian justice system would have been without colonization? Subjects indicated that without colonization chiefs would have continued to be the legal authority over the various ethnic groups and continued to exact punishments. Additionally, since the traditional courts were not structured to make use of lawyers and judges, there would not have been a legal profession. Not only would the justice system be different, the geographical boundaries of what is now Ghana would have been different. As the current geographical boundaries of Ghana were mapped out by the British to demarcate the boundaries of the colonial jurisdiction, there is the possibility that there would not have been a country named Ghana existing today.

When subjects were asked, Should the Ghanaian legal system subscribe to a particular theory of punishment? Respondents advised that the justice system of Ghana should not subscribe to a particular theory of punishment. Rather, it should incorporate the various theories of punishment- retribution, deterrence and rehabilitation- into the sentencing of offenders. Basically, the unique characteristics and dynamics of each case should be considered. This recommendation indicates that our respondents are not only

interested in the punishment of the offender, but also interested ensuring social stability. Respondents believed that, by treating offenders, they may be able to reintegrate into the society (rehabilitation). Also, victims would have confidence in the system because they are sure an offender would be apprehended and held accountable (retribution). Finally, since individuals are aware they are likely to be apprehended and punished if they commit any crime, offenders and other members of the society are deterred (Deterrence).

### **Limitations of the Study**

The first limitation of the study is that any generalization of the findings and conclusions drawn from the data should be limited to the sample participants only. As no random sample of the study population was taken, the responses would not be representative of the whole population of people familiar with the justice system in Ghana.

A second limitation was associated with the medium of data collection — Skype interview or Electronic Survey. With the Skype interview, the researcher could not establish the rapport between them and the responder that would have emerged in a face-to-face interview. Much of the focus was on getting the interview done in order to avoid any technical or unforeseen challenges with the Internet. The electronic survey, on the other hand, did not provide the researcher with any the opportunity to capture facial and non-verbal cues like body language, pauses, inflection, and tone. These cues might have led to a better understanding of the answers provided by the subjects.



The final limitation has to do with the interpretation of some of the responses by the subjects. Some of the answers provided did not fit into any of the categories used for the coding. Those who used the electronic survey provided all of these types of responses. It may have been that some of the respondents did not understand the question and, since they could not clarify what the researcher was asking, these subjects responded to the question in the way in which they understood it. Therefore, their answers did not reflect an answer that was in line with the original intent of the question being asked. These responses were subsequently eliminated from the analysis and had the effect of reducing the sample numbers responding to certain questions.

### **Implication for Future Research**

The most obvious implication for further research is to conduct an investigation that would eliminate some of the limitations inherent in this study. This, of course, implies using a random sample and, perhaps, including offenders in the sample. This would allow for a wider view of the findings and their implications for the Ghana justice system.

On a broader plane, the findings of this study should provide the incentive for an investigation into why the British system is still being maintained, even though it was designed to exploit certain groups of people. Also, findings of this research may provide an incentive to conduct a longitudinal investigation of the Ghanaian justice system. A longitudinal study could ascertain whether or not the system is being altered to more reflect the traditional aspects of Ghanaian people or, given the principles of modernity, it

is being retained in its current state, reflecting the British system of justice.

On the theoretical level, this thesis may have many important ramifications, in that, it may provide sociologists and other academicians with a theoretical framework to explain the changes in the Ghanaian justice system. The changes in the Ghanaian justice system would now be associated with the conflict perspective and, for that matter, Michel Foucault's theory of social control.

This investigation has also provided empirical evidence that the soul of every race finds expression in its [traditional] institutions and that no people can profit by, or be helped by, institutions that do not reflect the people's character. Subjects surveyed in this study are calling for a return to some traditional institutions and philosophies that were in place during the precolonial era. They have indicated that the current justice system should be revised to include a non-custodial sentence, community service and custodial sentencing system premised on restoration and rehabilitative principles.

This thesis asked the crucial question, What accounts for the changes in the justice system of Ghana during the colonial era? It was found that most subjects believed that the ideas contained in Michel Foucault's theory of social control best explains the phenomenon. As was evident in the analysis, most respondents thought the change occurred because the British needed a system that allowed them to control indigenes. This change that was put in place changed Ghana's justice system dramatically.

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# APPENDIX A

INTERVIEW INSTRUMENT  
(SOCIOLOGY AND SOCIAL WORK DEPARTMENT)

Responses will be considered confidential

1. In your view what would you say led to the change in the legal and penal system during the colonial era in Ghana. Kindly explain your reason?
2. Were these changes necessary or not? How so?
3. Which groups of people would you say benefited or suffered the most because of the changes? Why?
4. What theory of punishment would you say characterized the pre-colonial and then the colonial era? Why?
5. What is the structure of the current legal and penal system now? How similar or different is it compared to the system which existed during the colonial era? Please explain.
6. In your view should the current legal and penal system be maintained?
  - a. "Yes"
  - b. If "no", how should it be altered
7. What theory of punishment do you believe is characterized by the current legal and penal system? What in your view is the reason?
8. Going forward, do you think the Ghanaian legal and penal system should subscribe to one of the following particular theories of punishment: Retributive, Deterrent, Rehabilitation or Rehabilitation?
  - a. If you think the Ghanaian system should so subscribe please explain.
9. If there had been no colonization of Ghana, do you believe the Ghanaian justice system would be different than what is now in place?

- a. If yes, how would it differ?

### SURVEY QUESTIONS

1. Before Gold Coast came under the aegis of British rule, Gold Coasters were regulated by traditional laws (customary laws) with a commensurate penal system. However, this arrangement was altered during the colonial era. In your view, what accounts for the changes in the legal and penal arrangement during the colonial era?
2. Were these changes necessary or not?
  - a. Yes
  - b. No
  - c. No Response/ No Opinion
3. Which groups of people would you say benefited or suffered the most because of the changes?
  - a. Gold Coasters
  - b. Colonists
  - c. Others\_\_\_\_\_
4. What theory of punishment would you say characterized the pre-colonial era?
  - a. Retributive
  - b. Deterrent
  - c. Rehabilitation
  - d. Incapacitation
  - e. Others\_\_\_\_\_

4a. What, in your opinion, is the reason they subscribed to this philosophy of punishment?
5. What theory of punishment would you say characterized the colonial era?
  - a. Retributive
  - b. Deterrent
  - c. Rehabilitation
  - d. Incapacitation
  - e. Others\_\_\_\_\_

5a. What, in your opinion, is the reason they subscribed to this philosophy of punishment?



6. What theory of punishment would you say characterizes the current era?

- a. Retributive
- b. Deterrent
- c. Rehabilitation
- d. Incapacitation
- e. Others\_\_\_\_\_

6a. Why this theory of punishment, in your opinion?

7. Is the current penal system different from what existed in the colonial era?

- a. Yes
- b. No
- c. No Response/ No Opinion

Answer question (7a) if you answered "YES" to question 7.      Answer question (7b) if you answered "NO" to question 7.

7a. Kindly explain how different it is, compared to what existed in the colonial era?

7b. Why do you think this system was maintained?

8. Should the current legal and penal system be altered?

- a. Yes
- b. No
- c. Response/ No Opinion

8a. Why?

9. Do you think the Ghanaian legal and penal system should subscribe to a particular theory of punishment?

- a. Yes
- b. No
- c. No Response/ No Opinion

10. If you answered "yes" to question number (10), what then would be the ideal theory of punishment?

- a. Retributive
- b. Deterrent
- c. Rehabilitation
- d. Incapacitation
- e. Others\_\_\_\_\_

11. Do you believe a judge should consider mitigating or aggravating circumstances when sentencing an offender?
- a. Yes
  - b. No
  - c. Not sure
- (Please explain your answer.)
12. If there had been no colonization of Ghana, Would the justice system be different from what is now in place?
- a. Yes
  - b. No
  - c. No Response/ No Opinion
13. If yes, how so?

### DEMOGRAPHICS

- 2. Gender
- 3. Age
- 4. Where were you raised (Geographical location)?
- 5. Where did you earn your degree (University/Location)?
- 6. What is your occupation?
  - a. Judge
  - b. Lawyer
  - c. Other\_\_\_\_\_

# APPENDIX B

**Table A****Gender**

Variables	Subjects
Male	70% (21)
Female	30% (9)

*Source: Field Survey, January- March 2017*

**Table B**  
**Profession**

Judges	3.3% (1)
Lawyers	56.7% (17)
Others	40% (12)

*Source: Field Survey, January- March 2017*

**Table C****Age Range- Measures of Central Tendency**

Mean	26
Median	28
Mode	28

*Source: Field Survey, January- March 2017*

**Table D**  
**Geographic Location- Where subject was raised**

Greater Accra Region	30% (9)
Central Region	3.3% (1)
Upper East Region	3.3% (1)
Northern Region	3.3% (1)
Brong Ahafo Region	3.3% (1)
Western Region	3.3% (1)
Ashanti Region	27%
Upper West Region	3.3% (1)
Ashanti and Accra	3.3% (1)

*Source: Field Survey, January- March 2017*

**Table E****Where subjects obtained their degree**

Ghana	97%
London- UK	3.3%

*Source: Field Survey, January- March 2017*